WESTERN
NEW ENGLAND
COLLEGE

SCHOOL *of* LAW

MASSACHUSETTS HOUSING COURT HANDBOOK

CONSUMER PROTECTION CLINIC

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rental payment, check or voucher other than a salary payment to either the tenant or the landlord, the court in any such action shall continue the hearing not less than seven days in order to furnish notice of such action to the appropriate agency and shall, if all rent due with interest and costs of suit has been tendered to the landlord within such time, treat the tenancy as not having been terminated.

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or rental payment, check or voucher other than a salary payment to either the tenant or the landlord, the court in any action for possession shall continue the hearing not less than seven days in order to furnish notice of such action to the appropriate agency and shall, if all rent due with interest and costs of suit has been tendered to the landlord within such time, treat the tenancy as not having been terminated.

Chapter 186: Section 13. Recovery of possession after termination of tenancy at will

Section 13. Whenever a tenancy at will of premises occupied for dwelling purposes, other than a room or rooms in a hotel, is terminated, without fault of the tenant, either by operation of law or by act of the landlord, except as provided in section twelve, no action to recover possession of the premises shall be brought, nor shall the tenant be dispossessed, until after the expiration of a period, equal to the interval between the days on which the rent reserved is payable or thirty days, whichever is longer, from the time when the tenant receives notice in writing of such termination; but such tenant shall be liable to pay rent for such time during the said period as he occupies or retains the premises, at the same rate as theretofore payable by him while a tenant at will; provided, that in the case of a rooming house, an action to recover possession of premises occupied for dwelling purposes may be brought seven days after written notice if the rent is payable on either a weekly or daily basis. A tenancy at will of property occupied for dwelling purposes shall not be terminated by operation of law by the conveyance, transfer or leasing of the premises by the owner or landlord thereof or by foreclosure.

Chapter 186: Section 13A. Tenants deemed to be at will upon foreclosure of residential real property; status of tenancy agreements where rental payment subsidized under state or federal law.

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Section 14. Any lessor or landlord of any building or part thereof occupied for dwelling purposes, other than a room or rooms in a hotel, but including a manufactured home or land therefor, who is required by law or by the express or implied terms of any contract or lease or tenancy at will to furnish water, hot water, heat, light, power, gas, elevator service, telephone service, janitor service or refrigeration service to any occupant of such building or part thereof, who willfully or intentionally fails to furnish such water, hot water, heat, light, power, gas, elevator service, telephone service, janitor service or refrigeration service at any time when the same is necessary to the proper or customary use of such building or part thereof, or any lessor or landlord who directly or indirectly interferes with the furnishing by another of such utilities or

services, or who transfers the responsibility for payment for any utility services to the occupant without his knowledge or consent, or any lessor or landlord who directly or indirectly interferes with the quiet enjoyment of any residential premises by the occupant, or who attempts to regain possession of such premises by force without benefit of judicial process, shall be punished by a fine of not less than twenty-five dollars nor more than three hundred dollars, or by imprisonment for not more than six months. Any person who commits any act in violation of this section shall also be liable for actual and consequential damages or three month's rent, whichever is greater, and the costs of the action, including a reasonable attorney's fee, all of which may be applied in setoff to or in recoupment against any claim for rent owed or owing. The superior and district courts shall have jurisdiction in equity to restrain violations of this section. The provisions of section eighteen of chapter one hundred and eighty-six and section two A of chapter two hundred and thirty-nine shall apply to any act taken as a reprisal against any person for reporting or proceeding against violations of this section. Any waiver of this provision in any lease or other rental agreement, except with respect to any restriction on the provision of a service specified in this section imposed by the United States or any agency thereof or the commonwealth or any agency or political subdivision thereof and not resulting from the acts or omissions of the landlord or lessor, and except for interruptions of any specified service during the time required to perform necessary repairs to apparatus necessary for the delivery of said service or interruptions resulting from natural causes beyond the control of the lessor or landlord, shall be void and unenforceable.

Chapter 186: Section 15. Non-liability of landlord; provisions in lease or rental agreement

Section 15. Any provision of a lease or other rental agreement relating to real property whereby a lessee or tenant enters into a covenant, agreement or contract, by the use of any words whatsoever, the effect of which is to indemnify the lessor or landlord or hold the lessor or landlord harmless, or preclude or exonerate the lessor or landlord from any or all liability to the lessee or tenant, or to any other person, for any injury, loss, damage or liability arising from any omission, fault, negligence or other misconduct of the lessor or landlord on or about the leased or rented premises or on or about any elevators, stairways, hallways or other appurtenance used in connection therewith, shall be deemed to be against public policy and void.

Chapter 186: Section 15A. Waiver of notices; lease or rental agreement provisions; validity

Section 15A. Any provision of a lease or other rental agreement relating to residential real property whereby a lessee or tenant enters into a covenant, agreement or contract, by the use of any words whatsoever, the effect of which is to waive the notices required under section eleven or twelve, shall be deemed to be against public policy and void.

Chapter 186: Section 15B. Entrance of premises prior to termination of lease; payments; receipts; interest; records; security deposits

Section 15B.

(1) (a) No lease relating to residential real property shall contain a provision that a lessor may, except to inspect the premises, to make repairs thereto or to show the same to a prospective tenant, purchaser, mortgagee or its agents, enter the premises before the termination date of such lease. A lessor may, however, enter such premises:

(i) in accordance with a court order;

(ii) if the premises appear to have been abandoned by the lessee; or

(iii) to inspect, within the last thirty days of the tenancy or after either party has given notice to the other of intention to terminate the tenancy, the premises for the purpose of determining the amount of damage, if any, to the premises which would be cause for deduction from any security deposit held by the lessor pursuant to this section.

(b) At or prior to the commencement of any tenancy, no lessor may require a tenant or prospective tenant to pay any amount in excess of the following:

(i) rent for the first full month of occupancy; and,

(ii) rent for the last full month of occupancy calculated at the same rate as the first month; and,

(iii) a security deposit equal to the first month's rent provided that such security deposit is deposited as required by subsection (3) and that the tenant is given the statement of condition as required by subsection (2); and,

(iv) the purchase and installation cost for a key and lock.

(c) No lease or other rental agreement shall impose any interest or penalty for failure to pay rent until thirty days after such rent shall have been due.

(d) No lessor or successor in interest shall at any time subsequent to the commencement of a tenancy demand rent in advance in excess of the current month's rent or a security deposit in excess of the amount allowed by this section. The payment in advance for occupancy pursuant to this section shall be binding upon all successors in interest.

(e) A security deposit shall continue to be the property of the tenant making such deposit, shall not be commingled with the assets of the lessor, and shall not be subject to the claims of any creditor of the lessor or of the lessor's successor in interest,

including a foreclosing mortgagee or trustee in bankruptcy; provided, however, that the tenant shall be entitled to only such interest as is provided for in subsection (3)(b).

(2)(a) Any lessor or his agent who receives, at or prior to the commencement of a tenancy, rent in advance for the last month of the tenancy from a tenant or prospective tenant shall give to such tenant or prospective tenant at the time of such advance payment a receipt indicating the amount of such rent, the date on which it was received, its intended application as rent for the last month of the tenancy, the name of the person receiving it and, in the case of an agent, the name of the lessor for whom the rent is received, and a description of the rented or leased premises, and a statement indicating that the tenant is entitled to interest on said rent payment at the rate of five per cent per year or other such lesser amount of interest as has been received from the bank where the deposit has been held payable in accordance with the provisions of this clause, and a statement indicating that the tenant should provide the lessor with a forwarding address at the termination of the tenancy indicating where such interest may be given or sent.

Any lessor or his agent who receives said rent in advance for the last month of tenancy shall, beginning with the first day of tenancy, pay interest at the rate of five per cent per year or other such lesser amount of interest as has been received from the bank where the deposit has been held. Such interest shall be paid over to the tenant each year as provided in this clause; provided, however, that in the event that the tenancy is terminated before the anniversary date of such tenancy, the tenant shall receive all accrued interest within thirty days of such termination. Interest shall not accrue for the last month for which rent was paid in advance. At the end of each year of tenancy, such lessor shall give or send to the tenant from whom rent in advance was collected a statement which shall indicate the amount payable by such lessor to the tenant. The lessor shall at the same time give or send to such tenant the interest which is due or shall notify the tenant that he may deduct the interest from the next rental payment of such tenant. If, after thirty days from the end of each year of the tenancy, the tenant has not received said interest due or said notice to deduct the interest from the next rental payment, the tenant may deduct from his next rent payment the interest due.

If the lessor fails to pay any interest to which the tenant is then entitled within thirty days after the termination of the tenancy, the tenant upon proof of the same in an action against the lessor shall be awarded damages in an amount equal to three times the amount of interest to which the tenant is entitled, together with court costs and reasonable attorneys fees.

(b) Any lessor or his agent who receives a security deposit from a tenant or prospective tenant shall give said tenant or prospective tenant at the time of receiving such security deposit a receipt indicating the amount of such security deposit, the name of the person receiving it and, in the case of an agent, the name of the lessor for whom such security deposit is received, the date on which it is received, and a

description of the premises leased or rented. Said receipt shall be signed by the person receiving the security deposit.

(c) Any lessor of residential real property, or his agent, who accepts a security deposit from a tenant or prospective tenant shall, upon receipt of such security deposit, or within ten days after commencement of the tenancy, whichever is later, furnish to such tenant or prospective tenant a separate written statement of the present condition of the premises to be leased or rented. Such written statement shall also contain a comprehensive listing of any damage then existing in the premises, including, but not limited to, any violations of the state sanitary or state building codes certified by a local board of health or building official or adjudicated by a court and then existing in the premises. Such statement shall be signed by the lessor or his agent and contain the following notice in twelve-point bold-face type at the top of the first page thereof: "This is a statement of the condition of the premises you have leased or rented. You should read it carefully in order to see if it is correct. If it is correct you must sign it. This will show that you agree that the list is correct and complete. If it is not correct, you must attach a separate signed list of any damage which you believe exists in the premises. This statement must be returned to the lessor or his agent within fifteen days after you receive this list or within fifteen days after you move in, whichever is later. If you do not return this list, within the specified time period, a court may later view your failure to return the list as your agreement that the list is complete and correct in any suit which you may bring to recover the security deposit."

If the tenant submits to the lessor or his agent a separate list of damages, the lessor or his agent shall, within fifteen days of receiving said separate list, return a copy of said list to the tenant with either such lessor's signed agreement with the content thereof or a clear statement of disagreement attached.

(d) Every lessor who accepts a security deposit shall maintain a record of all such security deposits received which contains the following information:—

(i) a detailed description of any damage done to each of the dwelling units or premises for which a security deposit has been accepted, returned to any tenant thereof or for which the lessor has brought suit against any tenant;

(ii) the date upon which the occupancy of the tenant or tenants charged with such damage was terminated; and

(iii) whether repairs were performed to remedy such damage, the dates of said repairs, the cost thereof, and receipts therefor.
Said record shall also include copies of any receipt or statement of condition given to a tenant or prospective tenant as required by this section.

Said record shall be available for inspection upon request of a tenant or prospective tenant during normal business hours in the office of the lessor or his agent. Upon a wrongful failure by the lessor or his agent to make such record available for

inspection by a tenant or prospective tenant, said tenant or prospective tenant shall be entitled to the immediate return of any amount paid in the form of a security deposit together with any interest which has accrued thereon.

The lessor or his agent shall maintain said record for each dwelling unit or premises for which a security deposit was accepted for a period of two years from the date of termination of the tenancy or occupancy upon which the security deposit was conditioned.

(3) (a) Any security deposit received by such lessor shall be held in a separate, interest-bearing account in a bank, located within the commonwealth under such terms as will place such deposit beyond the claim of creditors of the lessor, including a foreclosing mortgagee or trustee in bankruptcy, and as will provide for its transfer to a subsequent owner of said property. A receipt shall be given to the tenant within thirty days after such deposit is received by the lessor which receipt shall indicate the name and location of the bank in which the security deposit has been deposited and the amount and account number of said deposit. Failure to comply with this paragraph shall entitle the tenant to immediate return of the security deposit.

(b) A lessor of residential real property who holds a security deposit pursuant to this section for a period of one year or longer from the commencement of the term of the tenancy shall, beginning with the first day of the tenancy, pay interest at the rate of five per cent per year, or other such lesser amount of interest as has been received from the bank where the deposit has been held payable to the tenant at the end of each year of the tenancy. Such interest shall be paid over to the tenant each year as provided in this clause, provided, however, that in the event that the tenancy is terminated before the anniversary date of the tenancy, the tenant shall receive all accrued interest within thirty days of such termination. Such interest shall be beyond the claims of such lessor, except as provided for in this section. At the end of each year of a tenancy, such lessor shall give or send to the tenant from whom a security deposit has been received a statement which shall indicate the name and address of the bank in which the security deposit has been placed, the amount of the deposit, the account number, and the amount of interest payable by such lessor to the tenant. The lessor shall at the same time give or send to each such tenant the interest which is due or shall include with the statement required by this clause a notification that the tenant may deduct the interest from the tenant's next rental payment. If, after thirty days from the end of each year of the tenancy, the tenant has not received such notice or payment, the tenant may deduct from his next rent payment the interest due.

(4) The lessor shall, within thirty days after the termination of occupancy under a tenancy-at-will or the end of the tenancy as specified in a valid written lease agreement, return to the tenant the security deposit or any balance thereof; provided, however, that the lessor may deduct from such security deposit for the following:

(i) any unpaid rent or water charges which have not been validly withheld or deducted pursuant to any general or special law

(ii) any unpaid increase in real estate taxes which the tenant is obligated to pay pursuant to a tax escalation clause which conforms to the requirements of section fifteen C; and

(iii) a reasonable amount necessary to repair any damage caused to the dwelling unit by the tenant or any person under the tenant's control or on the premises with the tenant's consent, reasonable wear and tear excluded. In the case of such damage, the lessor shall provide to the tenant within such thirty days an itemized list of damages, sworn to by the lessor or his agent under pains and penalties of perjury, itemizing in precise detail the nature of the damage and of the repairs necessary to correct such damage, and written evidence, such as estimates, bills, invoices or receipts, indicating the actual or estimated cost thereof. No amount shall be deducted from the security deposit for any damage to the dwelling unit which was listed in the separate written statement of the present condition of the premises which was required to be given to the tenant prior to the execution of the lease or creation of the tenancy pursuant to clause (c) of subsection (2) or any damages listed in any separate list submitted by the tenant and signed by the lessor or his agent pursuant to said clause (c), unless the lessor subsequently repaired or caused to be repaired said damage and can prove that the renewed damage was unrelated to the prior damage and was caused by the tenant or by any person under the tenant's control or on the premises with the tenant's consent. Nothing in this section shall limit the right of a landlord to recover from a tenant, who wilfully or maliciously destroys or damages the real or personal property of said landlord, to the forfeiture of a security deposit, when the cost of repairing or replacing such property exceeds the amount of such security deposit.

No deduction may be made from the security deposit for any purpose other than those set forth in this section.

(5) Whenever a lessor who receives a security deposit transfers his interest in the dwelling unit for which the security deposit is held, whether by sale, assignment, death, appointment of a receiver or trustee in bankruptcy, or otherwise, the lessor shall transfer such security deposit together with any interest which has accrued thereon for the benefit of the tenant who made such security deposit to his successor in interest, and said successor in interest shall be liable for the retention and return of said security deposit in accordance with the provisions of this section from the date upon which said transfer is made; provided however, that the granting of a mortgage on such premises shall not be a transfer of interest. The successor in interest shall, within forty-five days from the date of said transfer, notify the tenant who made such security deposit that such security deposit was transferred to him and that he is holding said security deposit. Such notice shall also contain the lessor's name, business address, and business telephone number, and the name, business address, and business telephone number of his agent, if any. Said notice shall be in writing.

Upon such transfer, the lessor or his agent shall continue to be liable with respect to the provisions of this section until:

(a) there has been a transfer of the amount of the security deposit so held to the lessor's successor in interest and the tenant has been notified in writing of the transfer and of the successor in interest's name, business address, and business telephone number;

(b) there has been compliance with this clause by the successor in interest; or

(c) the security deposit has been returned to the tenant.

In the event that the lessor fails to transfer said security deposit to his successor in interest as required by this subsection the successor in interest shall, without regard to the nature of the transfer, assume liability for payment of the security deposit to the tenant in accordance with the provisions of this section; provided, however, that if the tenant still occupies the dwelling unit for which the security deposit was given, said successor in interest may satisfy such obligation by granting the tenant free use and occupancy of the dwelling unit for a period of time equivalent to that period of time for which the dwelling unit could be leased or occupied if the security deposit were deemed to be rent. The liability imposed by this paragraph shall not apply to a city or town which acquires title to property pursuant to chapter sixty or to a foreclosing mortgagee or a mortgagee in possession which is a financial institution chartered by the commonwealth or the United States. The term "rent", as used in the preceding sentence, shall mean the periodic sum paid by the tenant for the use and occupation of the dwelling unit in accordance with the terms of his lease or other rental agreement.

(6) The lessor shall forfeit his right to retain any portion of the security deposit for any reason, or, in any action by a tenant to recover a security deposit, to counterclaim for any damage to the premises if he:

(a) fails to deposit such funds in an account as required by subsection (3);

(b) fails to furnish to the tenant within thirty days after the termination of the occupancy the itemized list of damages, if any, in compliance with the provisions of this section;

(c) uses in any lease signed by the tenant any provision which conflicts with any provision of this section and attempts to enforce such provision or attempts to obtain from the tenant or prospective tenant a waiver of any provision of this section;

(d) fails to transfer such security deposit to his successor in interest or to otherwise comply with the provisions of subsection (5) after he has succeeded to an interest in residential real property; or,

(e) fails to return to the tenant the security deposit or balance thereof to which the tenant is entitled after deducting therefrom any sums in accordance with the provisions of this section, together with any interest thereon, within thirty days after termination of the tenancy.

(7) If the lessor or his agent fails to comply with clauses (a), (d), or (e) of subsection 6, the tenant shall be awarded damages in an amount equal to three times the amount of such security deposit or balance thereof to which the tenant is entitled plus interest at the rate of five per cent from the date when such payment became due, together with court costs and reasonable attorney's fees.

(7A) Whenever a lessor who receives rent in advance for the last month of tenancy transfers his interest in the dwelling unit for which the rental advance was received, whether by sale, assignment, death, appointment of a receiver or trustee in bankruptcy, or otherwise, the lessor shall credit an amount equal to such rental advance together with any interest which has accrued thereon for the benefit of the tenant who made such rental advance, to the successor in interest of such lessor, and said successor in interest shall be liable for crediting the tenant with such rental advance, and for paying all interest accrued thereon in accordance with the provisions of this section from the date upon which said transfer is made; provided, however, that the granting of a mortgage on such premises shall not be deemed a transfer of interest. The successor in interest shall, within forty-five days from the date of said transfer, notify the tenant who made such rental advance that such rental advance was so credited, and that such successor has assumed responsibility therefor pursuant to the foregoing provision. Such notice shall also contain the lessor's name, business address, and business telephone number, and the name, business address, and business telephone number of his agent, if any. Said notice shall be in writing. Upon such transfer, the lessor or his agent shall continue to be liable with respect to the provisions of this section until:—(a) there has been a credit of the amount of the rental advance so held to the lessor's successor in interest and the tenant has been notified in writing of the transfer and of the successor in interest's name, business address, and business telephone number; (b) there has been compliance with this clause by the successor in interest; or (c) the rental advance has been credited to the tenant and all accrued interest has been paid thereon.

In the event that the lessor fails to credit said rental advance to his successor in interest as required by this subsection, the successor in interest shall, without regard to the nature of the transfer, assume liability for crediting of the rental advance, and payment of all interest thereon to the tenant in accordance with the provisions of this section; provided, however, that if the tenant still occupies the dwelling unit for which the rental advance was given, said successor in interest may satisfy such obligation by granting the tenant free use and occupancy of the dwelling unit for a period of time equivalent to the period of time covered by the rental advance. The liability imposed by this subsection shall not apply to a city or town which acquires title to property pursuant to chapter sixty or to a foreclosing mortgagee or a mortgagee in possession which is a financial institution chartered by the commonwealth or by the United States.

(8) Any provision of a lease which conflicts with any provision of this section and any waiver by a tenant or prospective tenant of any provision of this section shall be deemed to be against public policy and therefore void and unenforceable.

(9) The provisions of this section shall not apply to any lease, rental, occupancy or tenancy of one hundred days or less in duration which lease or rental is for a vacation or recreational purpose.

Chapter 186: Section 15C. Residential real estate, lease payments based on real estate tax increases

Section 15C. No lease relating to residential real estate shall contain a provision which obligates a lessee to make payments to the lessor on account of an increased real estate tax levied during the term of the lease, unless such provision expressly sets forth (1) that the lessee shall be obligated to pay only that proportion of such increased tax as the unit leased by him bears to the whole of the real estate so taxed, (2) the exact percentage of any such increase which the lessee shall pay, and (3) that if the lessor obtains an abatement of the real estate tax levied on the whole of the real estate of which the unit leased by the lessee is a part, a proportionate share of such abatement, less reasonable attorney's fees, if any, shall be refunded to said lessee. Any provision of a lease in violation of the provisions of this section shall be deemed to be against public policy and void.

If the exact percentage of any such increased tax contained in such a provision is found to exceed that proportion of such increased tax as the lessee's unit bears to the whole of the real estate so taxed, then the lessor shall return to the lessee that amount of the tax payment collected from the lessee which exceeded the lessee's proportionate share of the increased tax, plus interest calculated at the rate of five per cent per year from the date of collection.

Chapter 186: Section 15D. Oral agreement to execute lease; delivery of lease copy; penalty; waiver

Section 15D. A lessor who has agreed orally to execute a lease and obtains the signature of the lessee shall, within thirty days thereafter, deliver a copy of said lease to the lessee, duly signed and executed by said lessor. Whoever violates any provision of this section shall be punished by a fine of not more than three hundred dollars. Any waiver of this provision in any lease or other rental agreement shall be void and unenforceable.

Chapter 186: Section 15E. Action against owner; injuries due to defects violating building code; defense; waiver

Section 15E. An owner of a building shall be precluded from raising as a defense in an action brought by a lessee, tenant or occupant of said building who has sustained an injury caused by a defect in a common area, that said defect existed at the time of the letting of the property, if said defect is at the time of the injury a violation of the building code of the city or town wherein the

property is situated. Any waiver of this provision in any lease or other rental agreement shall be void and unenforceable.

Chapter 186: Section 15F. Residential leases or rental agreements restricting litigation or landlord liability; ouster of tenant; remedies

Section 15F. Any provision of a lease or other rental agreement relating to residential real property whereby the tenant agrees to waive his right to trial by jury in any subsequent litigation with the landlord, or agrees that no action or failure to act by the landlord shall be construed as a constructive eviction, shall be deemed to be against public policy and void.

If a tenant is removed from the premises or excluded therefrom by the landlord or his agent except pursuant to a valid court order, the tenant may recover possession or terminate the rental agreement and, in either case, recover three months' rent or three times the damages sustained by him, and the cost of suit, including reasonable attorney's fees.

Any agreement or understanding between a landlord and a tenant which purports to exempt the landlord from any liability imposed by this section shall be deemed to be against public policy and void.

Chapter 186: Section 16. Leases or rental agreements restricting occupancy of children

Section 16. Any provision of a lease or other rental agreement relating to real property whereby a lessee or tenant enters into a covenant, agreement or contract, by the use of any words whatsoever, the effect of which is to terminate, or to provide that the lessor or landlord may terminate, such lease or agreement if the tenant has or shall have a child or children, who shall occupy the premises covered by such lease or agreement, shall be deemed to be against public policy and void.

Chapter 186: Section 17. Occupancy constituting tenancy at will; termination

Section 17. For the purposes of this chapter, chapter one hundred and eleven and chapter two hundred and thirty-nine, occupancy of a dwelling unit within premises licensed as a rooming house or lodging house, except for fraternities, sororities and dormitories of educational institutions, for three consecutive months shall constitute a tenancy at will; provided, however, that if the rent for occupancy in such premises is payable either daily or weekly, seven days written notice to the occupant shall be sufficient to terminate the tenancy where the tenant is committing or permitting to exist a nuisance in or is causing substantial damage to the rental unit, or is creating substantial damage to the rental unit, or is creating a substantial interference with the comfort, safety, or enjoyment of the landlord or other occupants of the accommodation; and provided, further, that the notice shall specify the nuisance or interference. Occupancy of a dwelling unit within a rooming house or lodging house, except for fraternities, sororities and dormitories of educational institutions, for more than thirty consecutive days and less than three consecutive months, or within a fraternity, sorority or dormitory of an educational institution for

any length of time, may only be terminated by seven days' notice in writing to the occupant by the operator of such dwelling unit.

Chapter 186: Section 18. Reprisal for reporting violations of law or for tenant's union activity; damages and costs; notice of termination, presumption; waiver in leases or other rental agreements prohibited

Section 18. Any person or agent thereof who threatens to or takes reprisals against any tenant of residential premises for the tenant's act of, commencing, proceeding with, or obtaining relief in any judicial or administrative action the purpose of which action is to obtain damages under, or otherwise enforce, any federal, state or local law, regulation, by-law or ordinance, which has as its objective the regulation of residential premises; or exercising the tenant's rights pursuant to section one hundred and twenty-four D of chapter one hundred and sixty-four; or reporting to the board of health or, in the city of Boston to the commissioner of housing inspection or to any other board having as its objective the regulation of residential premises a violation or a suspected violation of any health or building code or of any other municipal by-law or ordinance, or state or federal law or regulation which has as its objective the regulation of residential premises; or reporting or complaining of such violation or suspected violation in writing to the landlord or to the agent of the landlord; or for organizing or joining a tenants' union or similar organization, or for making or expressing an intention to make, a payment of rent to an organization of unit owners pursuant to paragraph (c) of section six of chapter one hundred and eighty-three A shall be liable for damages which shall not be less than one month's rent or more than three month's rent, or the actual damages sustained by the tenant, whichever is greater, and the costs of the suit, including a reasonable attorney's fee.

The receipt of any notice of termination of tenancy, except for nonpayment of rent, or, of increase in rent, or, of any substantial alteration in the terms of tenancy within six months after the tenant has commenced, proceeded with, or obtained relief in such action, exercised such rights, made such report or complaint, or organized or joined such tenants' union or within six months after any other person has taken such action or actions on behalf of the tenant or in, or relating to, the building in which the tenant resides, shall create a rebuttable presumption that such notice or other action is a reprisal against the tenant for engaging in such activities. Such presumption shall be rebutted only by clear and convincing evidence that such person's action was not a reprisal against the tenant and that such person had sufficient independent justification for taking such action, and would have in fact taken such action, in the same manner and at the same time the action was taken, regardless of tenants engaging in, or the belief that tenants had engaged in, activities protected under this section.
Any waiver of this provision in any lease or other rental agreement shall be void and unenforceable.

Chapter 186: Section 19. Notice to landlord of unsafe condition; tort actions for injuries resulting from uncorrected condition

Section 19. A landlord or lessor of any real estate except an owner-occupied two- or three-family dwelling shall, within a reasonable time following receipt of a written notice from a tenant

forwarded by registered or certified mail of an unsafe condition, not caused by the tenant, his invitee, or any one occupying through or under the tenant, exercise reasonable care to correct the unsafe condition described in said notice except that such notice need not be given for unsafe conditions in that portion of the premises not under control of the tenant. The tenant or any person rightfully on said premises injured as a result of the failure to correct said unsafe condition within a reasonable time shall have a right of action in tort against the landlord or lessor for damages. Any waiver of this provision in any lease or other rental agreement shall be void and unenforceable. The notice requirement of this section shall be satisfied by a notice from a board of health or other code enforcement agency to a landlord or lessor of residential premises not exempted by the provisions of this section of a violation of the state sanitary code or other applicable by-laws, ordinances, rules or regulations.

Chapter 186: Section 20. Attorneys' fees and expenses; residential lease provisions; implied covenant; waiver

Section 20. Whenever a lease of residential property shall provide that in any action or summary proceeding the landlord may recover attorneys' fees and expenses incurred as the result of the failure of the tenant to perform any covenant or agreement contained in such lease, or that amounts paid by the landlord therefor shall be paid by the tenant as additional rent, there shall be implied in such lease a covenant by the landlord to pay to the tenant the reasonable attorneys' fees and expenses incurred by the tenant as the result of the failure of the landlord to perform any covenant or agreement on its part to be performed under the lease or in the successful defense of any action or summary proceeding commenced by the landlord against the tenant arising out of the lease, and an agreement that such fees and expenses may be recovered as provided by law in an action commenced against the landlord or by way of counterclaim in any action or summary proceeding commenced by the landlord against the tenant. Any waiver of this section shall be void as against public policy.

Chapter 186: Section 21. Disclosure of insurance information by lessor; violations; waiver

Section 21. The landlord or lessor of any residential or commercial property, upon the written request of any tenant or lawful occupant, of any code or other law enforcement official or of any official of the municipality in which the property is situated, shall disclose in writing within fifteen days of such request the name of the company insuring the property against loss or damage by fire and the amount of insurance provided by each such company and the name of any person who would receive payment for a loss covered by such insurance. Whoever violates the provisions of this section shall be punished by a fine of not more than five hundred dollars. A waiver of this section in any lease or other rental agreement shall be void and unenforceable.

Chapter 186: Section 22. Definitions; submeter installation; testing; water use charges; public housing development exemption

Section 22.

(a) For the purposes of this section the following words shall have the following meanings:—

"Common area", any portion of a building with more than 1 dwelling unit that is not incorporated within a dwelling unit.

"Customer service charge", a fixed amount charged by a city or town or water company for providing water to a building.

"Dwelling unit", any house or building, or portion thereof, that is occupied, designed to be occupied, or is rented, leased or hired out to be occupied, as a home or residence of one or more persons.

"Landlord", the owner, lessor or sublessor of a dwelling unit, the building of which it is a part, or the premises wherein a customer receives water service through metered measurement.

"Submetering", use of a meter by a landlord who receives water from a water company, which meter measures water supplied to a dwelling unit to enable the landlord to charge the tenant of the dwelling unit separately for water usage, or which meter measures water supplied to a common area.

"Water company", a company, as defined in section 1 of chapter 165 or a municipal utility or any other waterworks system owned, leased, maintained, operated, managed or controlled by any unit of local government under any general or special law, which company, utility or system supplies water to a landlord through metered measurement. Any landlord imposing charges on tenants or otherwise engaging in any activity permitted under this section shall not be deemed thereby to be functioning as a water company as defined herein or to be subject to any laws or regulations regulating any such company.

"Water conservation device", for all showers, shower stalls, shower compartments or shower baths, a low-flow showerhead which shall have a maximum flow rate not exceeding 2 1/2 gallons of water per minute, for all faucets a maximum flow rate not exceeding 2 and 2/10 gallons of water per minute and for all water closets, ultra-low-flush water closets not exceeding 1 and 6/10 gallons of water per flush, contained within a dwelling unit.

(b) A landlord may cause to be installed by a plumber licensed in the commonwealth, at the expense of such landlord, submetering equipment in the landlord's building to measure the quantity of water provided for the exclusive use of each dwelling unit, provided that such equipment meets the standards of accuracy and testing of the American Water Works Association or a similar accredited association; and provided further, that a submeter is installed for each dwelling unit in the building and for the common areas of the building, so that all water used in a building is measured by both a primary meter and a submeter.

(c) A landlord may charge a tenant of a dwelling unit for water usage as measured through the use of submetering equipment only in accordance with this section and only

upon the landlord certifying that the dwelling unit is in compliance with this section to a board of health, health department or other municipal agency or department charged with enforcement of the state sanitary code. All provisions of this section allowing landlords to charge tenants for water usage shall also be deemed to apply to sewer service charges calculated by means of the same primary meter or submeter. Certification by the landlord shall be provided under the penalties of perjury and shall include a statement that: 1) the dwelling unit is eligible for the imposition on the tenant of a charge for water usage in accordance with paragraph (d); 2) all showerheads, faucets, and water closets in the dwelling unit are water conservation devices and that all water closets were installed by a licensed plumber; and 3) the water submeter measuring the use of water in the dwelling unit was installed by a licensed plumber and is in compliance with the standards of accuracy and testing referenced in subsection (b).

(d) A dwelling unit shall become eligible for the imposition on the tenant of a charge for water usage only upon the commencement of a new tenancy in such dwelling unit and only if: (1) the dwelling unit is being occupied for the first time; or (2) the previous tenant vacated the dwelling unit voluntarily, or was evicted from the dwelling unit for nonpayment of rent or for breach of lease or noncompliance with a rental agreement for the dwelling unit; provided, however, that a dwelling unit shall not be deemed eligible for submetering if the new tenant relocated involuntarily from another dwelling unit in the same building or building complex; and provided further, that once a tenant of a dwelling unit has been charged for the use of water in accordance with this section, such dwelling unit shall remain eligible for the imposition of a charge for the use of water in all subsequent tenancies; and provided further, that a licensed plumber employed by or under contract with the landlord may perform any work in a dwelling unit as is required by this section to allow for the imposition on a tenant of a charge for the use of water, even if such unit is occupied by a tenant upon whom a charge for the use of water cannot be imposed.

(e) A landlord may not charge the tenant of a dwelling unit separately for water usage measured by a submeter, nor allow such tenant to be so charged, unless the submeter measures only water that is supplied for the exclusive use of the particular dwelling unit and only to an area within the exclusive possession and control of the tenant of such dwelling unit and does not measure any water usage for any portion of the common areas or by any other party or dwelling unit; provided further, that a landlord shall not charge such tenant for water supplied through a submeter to the dwelling unit prior to the landlord installing fully functional water conservation devices for all faucets, showerheads and water closets in the dwelling unit; and provided further, that the landlord shall ensure that such water conservation devices are installed and functioning properly at the commencement of each subsequent tenancy in such dwelling unit.

(f) A landlord may not charge the tenant separately, nor allow tenant to be charged separately, for submetered water usage unless the tenant has signed a written rental agreement that clearly and conspicuously provides for such separate charge and that fully discloses in plain language the details of the water submetering and billing arrangement between the landlord and the tenant. Each bill for submetered water usage shall clearly

set forth all charges and all other relevant information, including, but not limited to, the current and immediately preceding submeter readings and the date of each such reading, the amount of water consumed since the last reading, the charge per unit of water, the total charge and the payment due date. Such charges shall be billed to the tenant in at leased as many periods as the landlord is billed by the water company providing such water to the building or such payments may be made on a monthly payment schedule as agreed to in the written rental agreement; provided, however, that if the landlord bills the tenant on a monthly basis, payment of the bill by the tenant shall be due 15 days after the date the bill is mailed to the tenant, but if the landlord bills the tenant at intervals greater than 1 month, payment of the bill by the tenant shall be due 30 days after the date the bill is mailed to the tenant. If the tenant fails to make such payment, such nonpayment shall be a material breach of the written rental agreement. Violation of such breach may be cured by payment of the water charges in full prior to any court hearing to adjudicate such violation.

(g) A landlord shall determine a calculated cost per unit of water consumption by dividing the total amount of any bill or invoice provided to the landlord from the water company for water usage, the customer service charge and taxes, but not including any interest for the late payment, penalty fees or other discretionary assessments or charges, for all water provided to the premises through the water company meter in that billing period, by the total amount of water consumption for the entire premises. The total amount charged separately to each submetered dwelling unit for water usage for any billing period shall not exceed such calculated cost per unit of water multiplied by the number of units of water delivered exclusively to the particular dwelling unit for the same billing period, provided that the landlord has verified that the total amounts of water usage measured by all submeters in the building, including all submeters for common areas, does not exceed the total amount of water usage in the building for the same billing period as shown on such bill or invoice.

(h) Whenever a tenancy in a dwelling unit commences after the beginning, but before the end, of a billing period for which the landlord has not been billed by the water company, the landlord shall mail to the tenant on the first day of such tenancy the reading on the submeter for the dwelling unit as of that day. The landlord may thereafter bill the tenant only for the water measured on the submeter subsequent to such reading.

(i) Whenever a tenancy in a dwelling unit terminates after the beginning, but before the end, of a billing period for which the landlord has not been billed by the water company, the landlord shall give to the tenant on the last day of such tenancy the reading on the submeter for the dwelling unit as of that day together with a final bill for water usage in the dwelling unit since the last prior reading of the submeter for such dwelling unit. The landlord shall charge the same rate for the water used by the tenant as the water company charged in the last bill issued to the landlord. Notwithstanding paragraph (f), the bill shall be immediately due and payable by the tenant. If the tenant does not pay the bill, the landlord may deduct the amount of the bill from any security deposit paid by the tenant in accordance with section 15B of chapter 186, prior to returning the balance of the security deposit, if any, to the tenant. If the landlord is not able to give the final reading on the

submeter for the dwelling unit together with a final bill for water usage to the tenant on the last day of the tenancy, the landlord shall mail such reading and such final bill to the tenant no later than the day after the termination of the tenancy. If the water company subsequently charges the landlord a lesser rate than the landlord charged the tenant in the final bill, the landlord shall recalculate the bill forthwith based on the lesser rate and mail to the tenant the revised bill together with a rebate for any overpayment made by the tenant.

(j) A landlord shall not charge or recover, or allow to be charged or recovered, any additional servicing, administrative, establishment, meter-reading, meter-testing, billing, or submetering fee or other fee whatsoever, however denominated.

(k) Water usage separately charged to tenants pursuant to this section shall be delivered by the water company to the landlord and such landlord shall:— (1) be the consumer; (2) for billing purposes, be the customer of record; (3) be responsible for payment of the water company bills; and (4) be subject to any actions of the water company for nonpayment.

(l) In the event of nonpayment of a bill to a water company by the landlord, such water company shall have all the remedies against the customer of the water company available pursuant to any law, rule or regulation. A landlord may not shut off or refuse water service to a tenant on the basis that the tenant has not paid a separately assessed submetered water usage charge.

(m) The landlord shall retain an affirmative obligation to maintain in good working order the water supply system to each dwelling unit and any component thereof, including any water conservation device and submeter installed pursuant to this section, and to respond in a timely manner to any request by the tenant for the repair of any defect or malfunctioning in such water supply system, including any leak. Such water supply system to any dwelling unit and any component thereof including, but not limited to, any water conservation device and submeter installed pursuant to this section, shall be governed by and maintained in accordance with the state sanitary code. In the event of any overcharge by the landlord or any violation of the state sanitary code, the tenant shall have all rights and remedies provided under law for such overcharges or such violations including, but not limited to, the rights and remedies provided under chapters 111, 186 and 239.

(n) Upon receipt of a bill for water usage from the landlord and within the time allowed for paying the bill, a tenant may request that a person or entity with expertise in the installation and operation of water submeters and with no financial or other relationship with the landlord, test the submeter for the dwelling unit leased by the tenant to determine whether it is accurately measuring the water being used in the dwelling unit. If the submeter is found to be measuring more water than is being used in the dwelling unit, the landlord shall install a new submeter at his own expense and shall also pay for the cost of the test. In addition, the person or entity conducting the test shall determine as accurately as possible the amount of water that was improperly measured by the submeter in both

the prior and current billing periods. The landlord shall calculate the amount the tenant was overcharged for the prior billing period and reduce the bill by that amount, or, if the tenant has already paid the bill, give the tenant a rebate in that amount. Upon receipt from the water company of the bill for the current billing period, the landlord shall calculate the amount of the bill attributable to the excessive measurement by the submeter and reduce the bill to the tenant by that amount prior to sending it to the tenant. If the submeter is found to be measuring no more water than is being used in the dwelling unit, the tenant shall pay for the cost of the test; provided, however, that if the tenant does not pay for the cost of the test, the landlord may add such cost to the next bill sent to the tenant and such cost shall be considered a part of the bill for purposes of paragraph (f) and clause (i) of subsection (4) of section 15B of chapter 186.

(o) In the event of a repair of a leak in the water supply system to a dwelling unit, the landlord shall determine as accurately as possible the amount of water that was measured on the submeter for the dwelling unit as a result of such leak, after a review of the billing records for the dwelling unit and consultation with the licensed plumber repairing the leak. The landlord shall then determine the amount of the bill for the billing period in which the leak occurred that was attributable to such leak and reduce the bill to the tenant by that amount or, if such bill has already been paid, grant the tenant a rebate in that amount; provided, however, that with regard to any leak about which the tenant knew or should have known, the landlord shall only be required to reduce the bill to the tenant, or to grant a rebate to the tenant, by or in an amount attributable to the water usage measured on the submeter as a result of the leak between the date the tenant gave notice to the landlord of the leak and the date the leak was repaired.

(p) A landlord may impose a charge for water use on the tenant of a dwelling unit that is connected directly to a meter installed by a water company; provided that the meter measures only water that is supplied for the exclusive use of the dwelling unit and only to an area within the exclusive possession and control of the tenant of such dwelling unit and does not measure water usage for any portion of any common area or by any other party or dwelling unit. The landlord and tenant shall have all of the same rights and obligations with respect to water charges for such dwelling unit that landlords and tenants have under this section with respect to water charges for any dwelling unit connected to a submeter; provided, however, that the landlord shall not be required to include in the certificate required by subsection (c) the information required by clause (3) of said subsection (c) for dwelling units connected to a submeter; and provided further, that subsection (n) shall not apply to dwelling units connected directly to a meter installed by a water company. Upon a request by the tenant of a dwelling unit connected directly to a meter installed by a water company, the landlord shall apply for a test of the meter to determine its accuracy in accordance with section 10 of chapter 165. The test shall be conducted in accordance with said section 10. The tenant shall reimburse the landlord for any cost incurred in connection with such test. If the tenant does not reimburse the landlord for such cost, the landlord may add such cost to the next bill sent to the tenant and such cost shall be considered to be part of the bill for purposes of subsection (f) and clause (i) of subsection (4) of section 15B of chapter 186.

(q) Nothing in this section shall be construed to increase or expand, change, eliminate, reduce or otherwise limit the liabilities or obligations of any water company that are set forth in any law, rule, regulation or order to the tenant of a dwelling unit who is receiving water provided to the building by the water company.

(r) Nothing in this section shall affect or impair the powers and duties of the department of environmental protection or the department of public health with respect to water supply under chapter 111.

(s) No charge for water usage may be imposed on the tenant of any dwelling unit in a public housing development pursuant to chapter 200 of the acts of 1948, chapter 667 of the acts of 1954, chapter 705 of the acts of 1966, or chapter 689 of the acts of 1974.

(t) The department of public health shall promulgate such additional regulations to the state sanitary code as it determines to be necessary to implement this section.

PART III. COURTS, JUDICIAL OFFICERS AND PROCEEDINGS IN CIVIL CASES
TITLE III. REMEDIES RELATING TO REAL PROPERTY
CHAPTER 239. SUMMARY PROCESS FOR POSSESSION OF LAND

Chapter 239: Section 1. Persons entitled to summary process

Section 1. If a forcible entry into land or tenements has been made, if a peaceable entry has been made and the possession is unlawfully held by force, if the lessee of land or tenements or a person holding under him holds possession without right after the determination of a lease by its own limitation or by notice to quit or otherwise, or if a mortgage of land has been foreclosed by a sale under a power therein contained or otherwise, or if a person has acquired title to land or tenements by purchase, and the seller or any person holding under him refuses to surrender possession thereof to the buyer, or if a tax title has been foreclosed by decree of the land court, or if a purchaser, under a written agreement to purchase, is in possession of land or tenements beyond the date of the agreement without taking title to said land as called for by said agreement, the person entitled to the land or tenements may recover possession thereof under this chapter. A person in whose favor the land court has entered a decree for confirmation and registration of his title to land may in like manner recover possession thereof, except where the person in possession or any person under whom he claims has erected buildings or improvements on the land, and the land has been actually held and possessed by him or those under whom he claims for six years next before the date of said decree or was held at the date of said decree under a title which he had reason to believe good.

Chapter 239: Section 1A. Land or tenements used for residential purposes; action by lessor under this chapter to recover possession; conditions and restrictions

Section 1A. A lessor of land or tenements used for residential purposes may bring an action under this chapter to recover possession thereof before the determination of the lease by its own limitation, subject to the following conditions and restrictions. The tenancy of the premises at issue shall have been created for at least six months duration by a written lease in which a specific termination date is designated, a copy of which, signed by all parties, shall be annexed to the summons. No such action may be initiated before the latest date permitted by the lease for either party to notify the other of his intention to renew or extend the rental agreement, or in any case before thirty days before the designated termination date of the tenancy. The person bringing the action shall notify all defendants by registered mail that he has done so, which notification shall be mailed not later than twenty-four hours after the action is initiated. The person bringing the action shall demonstrate substantial grounds upon which the court could reasonably conclude that the defendant is likely to continue in possession of the premises at issue without right after the designated termination date, which grounds shall be set forth in the writ. No execution for possession may issue in any such action before the day next following the designated termination date of the tenancy. Any action brought pursuant to this section shall conform to and be governed by the provisions of this chapter in all other respects and no remedy or procedure otherwise available to any party, including any stay of execution which the court has discretion to allow, shall be denied solely because the action was brought pursuant to this section.

Chapter 239: Section 2. Jurisdiction; venue; form of writ

Section 2. Such person may bring an action in the superior court in the county in which the land lies if the plaintiff seeks money damages and there is no reasonable likelihood that recovery by the plaintiff will be less than or equal to $25,000, or such other amount as is ordered from time to time by the supreme judicial court. Where multiple damages are allowed by law, the amount of single damages claimed shall control. Such person may bring an action in the district court in the judicial district in which the land lies.

Such person may bring the action by a writ in the form of an original summons to the defendant to answer to the claim of the plaintiff that the defendant is in possession of the land or tenements in question, describing them, which he holds unlawfully against the right of the plaintiff, and, if rent and use and occupation is claimed, that the defendant owed rent and use and occupation in the amount stated; but, subject to the approval of the supreme judicial court, the judge of the housing court of the city of Boston shall determine the form of the writ in the actions brought in his court. Failure to claim rent and use and occupation in the action shall not bar a subsequent action therefor.

Chapter 239: Section 2A. Reprisal for reporting violations of law or for tenant's union activity; defense; presumption

Section 2A. It shall be a defense to an action for summary process that such action or the preceding action of terminating the tenant's tenancy, was taken against the tenant for the tenant's act of commencing, proceeding with, or obtaining relief in any judicial or administrative action the purpose of which action was to obtain damages under or otherwise enforce, any federal, state or local law, regulation, by-law, or ordinance, which has as its objective the regulation of residential premises, or exercising rights pursuant to section one hundred and twenty-four D of chapter one hundred and sixty-four, or reporting a violation or suspected violation of law as provided in section eighteen of chapter one hundred and eighty-six, or organizing or joining a tenants' union or similar organization or making, or expressing an intention to make, a payment of rent to an organization of unit owners pursuant to paragraph (c) of section six of chapter one hundred and eighty-three A. The commencement of such action against a tenant, or the sending of a notice to quit upon which the summary process action is based, or the sending of a notice, or performing any act, the purpose of which is to materially alter the terms of the tenancy, within six months after the tenant has commenced, proceeded with or obtained relief in such action, exercised such rights, made such report, organized or joined such tenants' union, or made or expressed an intention to make a payment of rent to an organization of unit owners, or within six months after any other person has taken such action or actions on behalf of the tenant or relating to the building in which such tenant resides, shall create a rebuttable presumption that such summary process action is a reprisal against the tenant for engaging in such activities or was taken in the belief that the tenant had engaged in such activities. Such presumption may be rebutted only by clear and convincing evidence that such action was not a reprisal against the tenant and that the plaintiff had sufficient independent justification for taking such action, and would have in fact taken such action, in the same manner and at the same time the action was taken, even if the tenant had not commenced any legal action, made such report or engaged in such activity.

Chapter 239: Section 3. Judgment and execution; costs; appeal

Section 3. Except as hereinafter provided, if the court finds that the plaintiff is entitled to possession, he shall have judgment and execution for possession and costs, and, if rent is claimed as provided in section two and found due, the judgment and execution shall include the amount of the award. If the plaintiff becomes nonsuit or fails to prove his right to possession, the defendant shall have judgment and execution for costs.

At least forty-eight hours prior to serving or levying upon an execution issued on a judgment for the plaintiff for possession of land or tenements rented or leased for dwelling purposes, the officer serving or levying upon the execution shall give the defendant written notice that at a specified date and time he will serve or levy upon the execution and that at that time he will physically remove the defendant and his personal possessions from the premises if the defendant has not prior to that time vacated the premises voluntarily.

The notice shall contain (1) the signature, full name, full business address and business telephone number of the officer; (2) the name of the court and the docket number of the action; (3) a statement that the officer will place any personal property remaining on the premises at the time the execution is levied in storage at a licensed public warehouse, and the full name, full business address, and business telephone number of the warehouse to be used; (4) a statement that the warehouser's storage rates may be ascertained by contacting the commissioner of public safety and the address and telephone number of such agency; (5) a statement that the warehouser may sell at auction any property that is unclaimed after 6 months and may retain that portion of the proceeds necessary to compensate him for any unpaid storage fees accrued as of the date of the auction, except as provided in section 4; and (6) a statement that the defendant should notify the warehouser in writing at the business address listed in the notice of any change in the defendant's mailing address. The notice referred to in this section shall be served in the same manner as the summary process summons and complaint and shall be filed in the court that issued the execution.

The officer shall select the public warehouser identified in the notice described in the preceding paragraph in a manner calculated to ensure that the defendant's personal property will be stored within a reasonable distance of the premises at issue in the summary process action. The officer shall not select pursuant to this section a warehouser whom the officer knows or reasonably believes to be in violation of any provision of section 4.
No execution for possession of premises rented or leased for dwelling purposes shall be served or levied upon after five o'clock p.m. or before nine o'clock a.m., nor on a Saturday, Sunday, or legal holiday.

If the underlying money judgment in any summary process action for nonpayment of rent in premises rented or leased for dwelling purposes has been fully satisfied, together with any use and occupancy accruing since the date of judgment, the plaintiff shall be barred from levying on any execution for possession that has issued and shall return the execution to the court fully satisfied. If no execution has issued, the plaintiff shall notify the court of the satisfaction of judgment and no execution shall issue thereafter. If the underlying money judgment has been fully satisfied and use and occupancy fully paid, the defendant shall be considered a lawful tenant and may enforce this right through judicial process, including injunctions barring the issuance of or levying upon the execution and motions to supersede or recall the execution. Notwithstanding this paragraph, the plaintiff shall not be required to accept full satisfaction of the money judgment. Any refusal by the plaintiff to accept full satisfaction of the money judgment under this paragraph shall not be a bar to the enforcement of said judgment in any lawful manner.

In case of appeal from the district court on either or both issues involved or on any counterclaim, the appeal shall be to the appellate division under section 5.

Chapter 239: Section 4. Storage of property removed; liens and enforcement; penalties

Section 4. (a) If an officer, serving an execution issued on a judgment for the plaintiff for possession of land or tenements, removes personal property, belonging to a person other than the plaintiff, from the land or tenements, he shall forthwith cause it to be stored for the benefit of the owners thereof. Such property shall be stored with the licensed public warehouser identified in the notice provided to the defendant pursuant to section 3, except that the officer shall store the property with a warehouser or other storage facility of the defendant's choosing if the defendant notifies the officer of his choice in writing at or before the time of removal of the property. The officer shall file with the court that issued the summary process judgment and provide to the defendant in hand, or if the defendant is not present at the time of execution by receipted mail to the defendant's last and best known address, a receipt containing a description of the goods removed or of the packages containing them, as well as name and signature of the officer.

(b) Any public warehouser who accepts property for storage pursuant to this section: (1) shall be licensed and bonded pursuant to section 1 of chapter 105 ; (2) shall file its current storage rates with the commissioner of public safety and shall not change such rates more than once annually, unless the commissioner of public safety or his designee gives prior written approval upon a showing of extraordinary circumstances; (3) shall not impose charges for storage under this section in excess of the rates filed with and not rejected by the commissioner of public safety at the time of service of the notice provided for in section 3; (4) shall not impose charges for storage under this section in excess of the fair market rates for storage facilities of similar quality in the warehouse's general locale; (5) shall not impose charges other than those for the actual storage of goods pursuant to this section, including, but not limited to, docking fees, warehouse labor fees, administrative fees, or other similar fees imposed in addition to the storage rates listed with the commissioner of public safety; (6) shall not impose minimum fees or otherwise charge storage fees for any period other than the period of actual storage; (7) shall credit toward the defendant's costs of storage any amount paid by the plaintiff or other third party in connection with the storage of the property in question; (8) shall send by first class mail to the defendant's last and best known address monthly statements of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien or security interest pursuant to this section; and (9) shall insure the defendant's property against fire and theft in the amount of no less than $10,000. A warehouser who accepts goods under this section is liable for any loss or injury to the goods caused by his or her failure to exercise such care in regard to them as a reasonably careful person would exercise under like circumstances but unless otherwise agreed or provided in this section, the warehouser is not liable for damages which could not have been avoided by the exercise of such care. No person shall be required to release a warehouser from liability as a condition of release of any stored property.

(c) The plaintiff in the summary process action shall pay the costs of removing the property to the place of storage. The plaintiff shall be entitled to reimbursement by the defendant for any costs and fees so advanced.

(d) Upon receipt of personal property under this section, a public warehouser shall forthwith, but no later than 7 days after the removal of the property from the land or tenements at issue in the summary process action, issue a warehouse receipt that complies with the requirements of section 7-202 of chapter 106. Such receipt shall contain as additional terms: (1) a statement that the warehouser may sell any property unclaimed after six months and retain that portion of the proceeds necessary to compensate the warehouser for lawful storage fees actually accrued as of the date of the auction, except as provided in this section; (2) a list of the warehouser's storage rates and a statement that such rates may be verified by contacting the commissioner of public safety, as well as the address and telephone number of such agency; (3) a conspicuous statement that the defendant should notify the warehouser in writing at the business address listed in the notice of any change in the defendant's mailing address; (4) a description of the applicable procedures for reclaiming the stored property, including, but not limited to, a statement that the defendant is entitled to reclaim items of personal or sentimental value but limited auction value once during the period of storage without payment of any fee and that the defendant shall be entitled to purchase individual items at any auction held to enforce the warehouser's lien created under this section and an identification of the publication in which any such auction will be advertised pursuant to subsection (f) of section 7-210 of said chapter 106. A duplicate copy of the warehouse receipt shall be kept on file at the place of storage and the original shall be served by receipted mail or hand delivery to the defendant at his last and best known address. The warehouser shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. A warehouser who fails to comply with the requirements of this subsection shall be liable for damages caused by the omission to a person injured thereby.

(e) Any warehouser who accepts personal property pursuant to this section shall have a lien thereon for charges for storage, insofar as such charges are imposed in accordance with this section. The lien shall not be enforced by sale or disposal of the property until it has been kept in storage for at least 6 months. Thereafter, the warehouser may enforce the lien in the manner provided for in subsection (2) of section 7-210 of chapter 106, except as otherwise provided in this section. The defendant shall be entitled to postpone the sale or disposal of his property for 3 months upon payment of one half of all storage fees incurred plus costs reasonably incurred in preparation for their sale pursuant to law. The warehouser may satisfy his lien from the proceeds of any sale or disposition under this section but must hold the balance for delivery on the demand of any person to whom he would have been bound to deliver the goods. A warehouser's failure to comply with any of the requirements of this section shall result in the forfeiture of his lien.

(f) The defendant may access his stored property once, without charge or payment of storage fees, either to inspect the property or to remove items having primarily personal or sentimental value, or both. Items having primarily personal or sentimental value, shall include but not be limited to photographs, passports, documents, funeral urns, and the like. All personal property stored under this section may be reclaimed at any time upon payment of all storage fees lawfully owed by the defendant. If the property is sold at auction, the defendant shall be entitled to purchase the property in bloc or in parcels, regardless of the terms of the public sale. The failure of any third party to pay monies owed by him to the warehouser shall not affect the rights of the property owner to reclaim property under this subsection.

(g) A warehouser who violates this section shall pay a civil penalty of not more than $5,000, in an amount to be determined by the commissioner of public safety after notice and an opportunity for an adjudicatory hearing under chapter 30A. The commissioner or his or her designee may at any time conduct an inspection of a public warehouse storing goods under this section for the purpose of assessing compliance with applicable health and safety codes and the requirements of this section. The commissioner may reject the rates filed by a warehouser for storage pursuant to this section if the commissioner determines that such rates are not commercially reasonable or otherwise violate this section. The failure of the commissioner to reject a warehouser's rates shall not create a presumption that such rates are commercially reasonable for purposes of liability under chapter 93A or this section.

(h) Notwithstanding any civil penalty imposed pursuant to subsection (g), the defendant may petition the court in which the summary process action was heard for damages or injunctive relief in connection with any violation of this section. A violation of this section shall also be a violation of section 2 of chapter 93A.

Chapter 239: Section 5. Appeal; bond; actions thereon; waiver; appeal of waiver or periodic payments; notice of decision

Section 5. (a) If either party appeals from a judgment of the superior court, a housing court, or a district court in an action under this chapter, including a judgment on a counterclaim, that party shall file a notice of appeal with the court within 10 days after the entry of the judgment. An execution upon a judgment rendered pursuant to section 3 shall not issue until the expiration of 10 days after the entry of the judgment.

(b) In an appeal of a judgment of a district court, other than an appeal governed by subsection (c), the appellant shall, before any appeal under this section is allowed, file in the district court a bond payable to the appellee in the penal sum of $100, with surety or sureties as approved by the court, or secured by cash or its equivalent deposited with the clerk, conditioned to satisfy any judgment for costs which may be entered against the appellant in the appellate division within 30 days after the entry thereof.

(c) Except as provided in section 6, the defendant shall, before any appeal under this section is allowed from a judgment of the superior court, a housing court, or a district court, rendered for the plaintiff for the possession of the land or tenements demanded in a case in which the plaintiff continues at the time of establishment of bond to seek to recover possession, give bond in a sum as the court orders, payable to the plaintiff, with sufficient surety or sureties approved by the court, or secured by cash or its equivalent deposited with the clerk, in a reasonable amount to be fixed by the court. In an appeal from a judgment of a district court the bond shall be conditioned to enter the action in the appellate division at the return day next after the appeal is taken. In an appeal from a judgment of the superior court or a housing court the bond filed shall be conditioned to enter the action in the appeals court. Appeals from judgments of the superior court or a housing court shall otherwise be governed by the Massachusetts Rules of Appellate Procedure. The bond shall also be conditioned to pay to the plaintiff, if final judgment is in plaintiff's favor, all rent accrued at the date of the bond, all intervening rent, and all damage and loss which the plaintiff may sustain by the withholding of possession of the land or tenements demanded and by any injury done thereto during the withholding, with all costs, until delivery of possession thereof to the plaintiff.

(d) In appeals from a judgment of the superior court, a housing court or a district court the deposit shall not be transmitted to the appeals court or the appellate division unless specifically requested by said appeals court or appellate division. The superior court, a housing court or a district court may give directions as to the manner of keeping the deposit. Upon final judgment for the plaintiff, all money then due to him may be recovered in an action on the bond provided for in the third paragraph of this section.

(e) A party may make a motion to waive the appeal bond provided for in this section if the party is indigent as provided in section 27A of chapter 261. The motion shall, together with a notice of appeal and any supporting affidavits, be filed within the time limits set forth in this section. The court shall waive the requirement of the bond or security if it is satisfied that the person requesting the waiver has any defense which is not frivolous and is indigent as provided in said section 27A of said chapter 261. The court shall require any person for whom the bond or security provided for in subsection (c) has been waived to pay in installments as the same becomes due, pending appeal, all or any portion of any rent which shall become due after the date of the waiver. A court shall not require the person to make any other payments or deposits. The court shall forthwith make a decision on the motion. If the motion is made, no execution shall issue until the expiration of 6 days from the court's decision on the motion or until the expiration of the time specified in this section for the taking of appeals, whichever is later.

(f) Any party aggrieved by the denial of a motion to waive the bond or who wishes to contest the amount of periodic payments required by the court may seek review of the decision as hereinafter provided. If the motion was made in the superior court or a housing court, the request for review shall be to the single justice of the appeals court at the next sitting thereof. If the motion was made in any district or municipal court,

the request for review shall be to the appellate division then sitting pursuant to section 108 of chapter 231. The court receiving the request shall review the findings, the amount of bond or deposit, if any, and the amount of periodic payment required, if any, as if it were initially deciding the matter, and the court may withdraw or amend any finding or reduce or rescind any amount of bond, deposit or periodic payment when in its judgment the facts so warrant.

(g) Any party to the action may file a request for the review with the clerk of the court originally hearing the request to waive bond within the time period provided in this section for filing notice of appeal, or within 6 days after receiving notice of the decision of the court on the motion to waive bond, whichever is the later. The court shall then forward the motion, the court's findings and any other documents relevant to the appeal to the clerk of the court reviewing the decision which, upon receipt thereof, shall schedule a speedy hearing thereon and send notice thereof to the parties. Any request for review filed pursuant to this section shall be heard upon statements of counsel, memoranda and affidavits submitted by the parties. Further testimony shall be taken if the reviewing court shall find that the taking of further testimony would aid the disposition of the review.

(h) Upon the rendering of a decision on review, the reviewing court shall give notice of the decision to the parties and the defendant shall comply with the requirements of the decision within 5 days after receiving notice thereof. If the defendant fails to file with the clerk of the court rendering the judgment, the amount of bond, deposit or periodic payment required by the decision of the reviewing court within 5 days from receipt of notice of the decision, the appeal from the judgment shall be dismissed. Where a defendant seeks review pursuant to this section, no execution shall issue until the expiration of 5 days from the date defendant has received notice of the decision of the reviewing court.

Chapter 239: Section 6. Condition of bond in action for possession after foreclosure of mortgage; after purchase

Section 6. If the action is for the possession of land after foreclosure of a mortgage thereon, the condition of the bond shall be for the entry of the action and payment to the plaintiff, if final judgment is in his favor, of all costs and of a reasonable amount as rent of the land from the day when the mortgage was foreclosed until possession of the land is obtained by the plaintiff. If the action is for possession of land after purchase, the condition of the bond shall be for the entry of the action and payment to the plaintiff, if final judgment is in his favor, of all costs and of a reasonable amount as rent of the land from the day that the purchaser obtained title to the premises until the delivery of possession thereof to him, together with all damage and loss which he may sustain by withholding of possession of the land or tenement demanded, and by any injury done thereto during such withholding with all costs. Upon final judgment for the plaintiff, all money then due to him may be recovered in an action on the bond.

Chapter 239: Section 6A. Condition of bond after foreclosure of tax title

Section 6A. If the action is for the possession of land after foreclosure of a tax title thereon, the condition of the bond shall be for the entry of the action and payment to the plaintiff, if final judgment is in his favor, of all costs and of a reasonable amount as rent of the land from the day when the tax title was foreclosed until possession of the land is obtained by the plaintiff, and of all damage and loss which he may sustain by the withholding of possession of the land or tenements demanded and by any injury done thereto during such withholding.

Chapter 239: Section 7. Judgments; effect

Section 7. The judgment in an action under this chapter shall not be a bar to any action thereafter brought by either party to recover the land or tenements in question, or to recover damages for any trespass thereon; but the amount recovered for rent under section five shall be deducted in any assessment of damages in such subsequent action by the original plaintiff.

Chapter 239: Section 8. Three years quiet possession; effect

Section 8. There shall be no recovery under this chapter of any land or tenements of which the defendant, his ancestors or those under whom he holds the land or tenements have been in quiet possession for three years next before the commencement of the action unless the defendant's estate therein is ended.

Chapter 239: Section 8A. Rent withholding; grounds; amount claimed; presumptions and burden of proof; procedures

Section 8A. In any action under this chapter to recover possession of any premises rented or leased for dwelling purposes, brought pursuant to a notice to quit for nonpayment of rent, or where the tenancy has been terminated without fault of the tenant or occupant, the tenant or occupant shall be entitled to raise, by defense or counterclaim, any claim against the plaintiff relating to or arising out of such property, rental, tenancy, or occupancy for breach of warranty, for a breach of any material provision of the rental agreement, or for a violation of any other law. The amounts which the tenant or occupant may claim hereunder shall include, but shall not be limited to, the difference between the agreed upon rent and the fair value of the use and occupation of the premises, and any amounts reasonably spent by the tenant or occupant pursuant to section one hundred and twenty-seven L of chapter one hundred and eleven and such other damages as may be authorized by any law having as its objective the regulation of residential premises.

Whenever any counterclaim or claim of defense under this section is based on any allegation concerning the condition of the premises or the services or equipment provided therein, the tenant or occupant shall not be entitled to relief under this section unless: (1) the owner or his agents, servants, or employees, or the person to whom the tenant or occupant customarily paid his rent knew of such conditions before the tenant or occupant was in arrears in his rent; (2) the

plaintiff does not show that such conditions were caused by the tenant or occupant or any other person acting under his control; except that the defendant shall have the burden of proving that any violation appearing solely within that portion of the premises under his control and not by its nature reasonably attributable to any action or failure to act of the plaintiff was not so caused; (3) the premises are not situated in a hotel or motel, nor in a lodging house or rooming house wherein the occupant has maintained such occupancy for less than three consecutive months; and (4) the plaintiff does not show that the conditions complained of cannot be remedied without the premises being vacated; provided, however, that nothing in this clause shall be construed to deprive the tenant or occupant of relief under this section when the premises are temporarily vacated for purposes of removal or covering of paint, plaster, soil or other accessible materials containing dangerous levels of lead pursuant to section one hundred and ninety-seven of chapter one hundred and eleven.

Proof that the premises are in violation of the standard of fitness for human habitation established under the state sanitary code, the state building code, or any other ordinance, by-law, rule or regulation establishing such standards and that such conditions may endanger or materially impair the health, safety or well-being of a person occupying the premises shall create a presumption that conditions existed in the premises entitling the tenant or occupant to a counterclaim or defense under this section. Proof of written notice to the owner or his agents, servants, or employees, or to the person to whom the tenant or occupant customarily paid his rent, of an inspection of the premises, issued by the board of health, or in the city of Boston by the commissioner of housing inspection, or by any other agency having like powers of inspection relative to the condition of residential premises, shall create a presumption that on the date such notice was received, such person knew of the conditions revealed by such inspection and mentioned in such notice. A copy of an inspection report issued by any such agency, certified under the penalties of perjury by the official who inspected the premises, shall be admissible in evidence and shall be prima facie evidence of the facts stated therein.

There shall be no recovery of possession pursuant to this chapter pending final disposition of the plaintiff's action if the court finds that the requirements of the second paragraph have been met. The court after hearing the case may require the tenant or occupant claiming under this section to pay to the clerk of the court the fair value of the use and occupation of the premises less the amount awarded the tenant or occupant for any claim under this section, or to make a deposit with the clerk of such amount or such installments thereof from time to time as the court may direct, for the occupation of the premises. In determining said fair value, the court shall consider any evidence relative to the effect of any conditions claimed upon the use and occupation of residential premises. Such funds may be expended for the repair of the premises by such persons as the court after a hearing may direct, including if appropriate a receiver appointed as provided in section one hundred and twenty-seven H of chapter one hundred and eleven. When all of the conditions found by the court have been corrected, the court shall direct that the balance of funds, if any, remaining with the clerk be paid to the landlord. Any tenant or occupant intending to invoke the provisions of this section may, after commencement of an action under this chapter by the landlord, voluntarily deposit with the clerk any amount for rent or for use and occupation which may be in dispute, and such payments shall be held by the clerk subject to the provisions of this paragraph.

There shall be no recovery of possession under this chapter if the amount found by the court to be due the landlord equals or is less than the amount found to be due the tenant or occupant by reason of any counterclaim or defense under this section. If the amount found to be due the landlord exceeds the amount found to be due the tenant or occupant, there shall be no recovery of possession if the tenant or occupant, within one week after having received written notice from the court of the balance due, pays to the clerk the balance due the landlord, together with interest and costs of suit, less any credit due the tenant or occupant for funds already paid by him to the clerk under this section. In such event, no judgment shall enter until after the expiration of the time for such payment and the tenant has failed to make such payment. Any such payment received by the clerk shall be held by him subject to the provisions of the preceding paragraph. Any provision of any rental agreement purporting to waive the provisions of this section shall be deemed to be against public policy and void. The provisions of section two A and of section eighteen of chapter one hundred and eighty-six shall apply to any tenant or occupant who invokes the provisions of this section.

Chapter 239: Section 9. Stay of proceedings

Section 9. In an action of summary process to recover possession of premises occupied for dwelling purposes, other than a room in a hotel, or a dwelling unit in a lodging house or rooming house wherein the occupant has maintained such occupancy for less than three consecutive months, where a tenancy has been terminated without fault of the tenant, either by operation of law or by act of the landlord, except by a notice to quit for nonpayment of rent as provided in section twelve of chapter one hundred and eighty-six, a stay or stays of judgment and execution may be granted, as hereinafter provided, for a period not exceeding six months or for periods not exceeding six months in the aggregate, or, for a period not exceeding twelve months or for periods not exceeding twelve months in the aggregate in the case of premises occupied by a handicapped person or an individual sixty years of age or older, as the court may deem just and reasonable, upon application of the tenant or the surviving spouse, parent or child of a deceased tenant if such spouse, parent or child occupied said premises for dwelling purposes at the time when said tenancy was terminated and such occupancy was not in violation of the terms of the tenancy; provided, however, that a stay or stays of judgment and execution in the case of premises occupied by an employee of a farmer conditioned upon his employment by such farmer and which employment has been legally terminated shall not be granted for a period exceeding two months or for periods exceeding two months in the aggregate. For the purpose of this section, the words “handicapped person” shall mean a person who:

(a) has a physical or mental impairment which substantially limits such person’s ability to care for himself, perform manual tasks, walk, see, hear, speak, breathe, learn or work; or

(b) has a physical or mental impairment which significantly limits the housing appropriate for such person or which significantly limits such person’s ability to seek new housing; or

(c) would be eligible for housing for handicapped persons under the provisions of chapter one hundred and twenty-one B.

Chapter 239: Section 10. Stay of proceedings; hearings

Section 10. Upon application for such a stay of proceedings, the court shall hear the parties, and if upon the hearing it appears that the premises of which possession is sought to be recovered are used for dwelling purposes; that the applicant cannot secure suitable premises for himself and his family elsewhere within the city or town in a neighborhood similar to that in which the premises occupied by him are situated; that he has used due and reasonable effort to secure such other premises; that his application is made in good faith and that he will abide by and comply with such terms and provisions as the court may prescribe; or that by reason of other facts such action will be warranted, the court may grant a stay as provided in the preceding section, on condition that the terms upon which such stay is granted be complied with.

In any action to recover possession of premises occupied for dwelling purposes brought pursuant to this chapter in which a stay or stays of execution have been granted, by the court or by agreement of the parties, or in any such action where there is an agreement for judgment that grants the tenant a right to reinstate the tenancy, no execution shall issue prior to the expiration of the period of such stay or stays or such reinstatement period unless the plaintiff shall first bring a motion for the issuance of the execution and the court after a hearing shall determine that the tenant or occupant is in substantial violation of a material term or condition of the stay or a material term of the agreement for judgment.

Chapter 239: Section 11. Stay of proceedings; deposit of applicant

Section 11. Such stay shall be granted and continue effective only upon the condition that the applicant shall make a deposit in court of the entire amount, or such installments thereof from time to time, as the court may direct, for the occupation of the premises for the period of the stay, at the rate to which he was liable as rent for the month immediately prior to the expiration of his term or tenancy plus such additional amount, if any, as the court may determine to be reasonable. The deposit shall also include all rent unpaid prior to the period of the stay. The amount of the deposit shall be determined by the court at the hearing upon the application for the stay, and such determination shall be final and conclusive in respect only to the amount of the deposit, and the amount thereof shall be paid into court, in such manner and in such installments, if any, as the court may direct. A separate account shall be kept of the amount to the credit of each proceeding, and all such payments shall be deposited by the clerk of the court, and paid over to the landlord or his duly authorized agent, in accordance with the terms of the stay or the further order of the court.

Chapter 239: Section 12. Stay of proceedings; validity of waiver in lease

Section 12. Any provision of a lease whereby a lessee or tenant waives the benefits of any provision of sections nine to thirteen, inclusive, shall be deemed to be against public policy and void.

Chapter 239: Section 13. Stay of proceedings; costs

Section 13. Costs recoverable under section three shall, in actions to which sections nine to eleven, inclusive, apply, include only legal costs covering actual disbursements and shall not include fictitious costs, so-called.

105 CMR 410.000: MINIMUM STANDARDS OF FITNESS FOR HUMAN HABITATION (STATE SANITARY CODE, CHAPTER II)

Section

410.001: Purpose

The purposes of 105 CMR 410.000 are to protect the health, safety and well-being of the occupants of housing and of the general public, to facilitate the use of legal remedies available to

occupants of substandard housing, to assist boards of health in their enforcement of this code and to provide a method of notifying interested parties of violations of conditions which require immediate attention.

410.002: Authority

105 CMR 410.000 is adopted under authority of M.G.L. c. 111, §§ 3 and 127A.

410.003: Citation

105 CMR 410.000 shall be known, and may be cited, as 105 CMR 410.000: *State Sanitary Code Chapter II: Minimum Standards of Fitness for Human Habitation*.

410.010: Scope

(A) No person shall occupy as owner-occupant or let to another for occupancy any dwelling, dwelling unit, mobile dwelling unit, or rooming unit for the purpose of living, sleeping, cooking or eating therein, which does not comply with the requirements of 105 CMR 410.000.

(B) The provisions of 105 CMR 410.000 shall not apply to any dwelling which:

(1) is located on a campground that is being operated in compliance with 105 CMR 420.000, 105 CMR 430.000, or 310 CMR 14.00; or

(2) is otherwise required to conform with standards of fitness for human habitation elsewhere existing in the State Sanitary Code; or

(3) is used exclusively as a civil defense shelter.

(C) Nothing contained herein shall be construed to limit or otherwise restrict any person from seeking judicial relief in a court of competent jurisdiction notwithstanding any hearing, proceeding or other administrative remedy set forth in 105 CMR 410.000.

410.020: Definitions

Asbestos means:
(1) chrysotile, amosite, crocidolite; or
(2) in fibrous form, tremolit-asbestos, anthophyllite-asbestos, or actinolite-asbestos.

Asbestos Material means asbestos or any material containing asbestos.

Board of Health means the appropriate and legally designated health authority of the city, town, county, or other legally constituted governmental unit within the Commonwealth having the usual powers and duties of the board of health of a city or town, or his or its authorized agent or representative.

Chronic Dampness means the regular and/or periodic appearance of moisture, water, mold or fungi.

Compliance means meeting all the requirements of 105 CMR 410.000. It shall also mean correcting any violations of 105 CMR 410.000 in a work-personlike fashion and restoring all parts of the dwelling, or unit thereof, to the condition they were in before occurrence of any such violations. Compliance shall also mean in those cases where licenses or permits are required to perform work necessary to correct the violations, such as, but not limited to building, plumbing and wiring that the appropriate official certifies that the work has been completed in accordance with applicable laws and regulations.

Compostable Material means an organic material excluding waste water treatment residuals which has the potential to be composted and which is pre-sorted and is not contaminated by significant amounts of toxic substances, as those terms are or may be defined by 310 CMR 19.00: *Solid Waste Management*.

Composting means a process of accelerated biodegradation and stabilization of organic material under controlled conditions yielding a product which can safely be used, as those terms are or may be defined by 310 CMR 19.00: *Solid Waste Management.*

A Condition Making a Unit Unfit for Human Habitation is a condition meeting the standard set forth in the Massachusetts General Laws under which a board of health may justify closing down, condemning, or demolishing a dwelling or dwelling unit. It shall mean a violation which poses such immediate harm or threat of harm to an occupant or to the public that other legal remedies cannot be reasonably expected to bring about removal of the condition with sufficient speed to prevent the serious harm or injury to the occupants or to the public.

A Condition Which May Endanger or materially impair the health or safety and wellbeing of an occupant means the existence of a condition, listed in 105 CMR 410.750 or any other condition so certified by the board of health to be a violation, which may expose or subject to harm, the health or safety, and the well-being of an occupant or the public.

Dwelling means every building or shelter including but not limited to rooming houses and temporary housing used or intended for human habitation and every other structure or condition located within the same lot line whose existence causes or is likely to effect noncompliance with the provisions of 105 CMR 410.000.

Dwelling Unit means the room or group of rooms within a dwelling used or intended for use by one family or household for living, sleeping, cooking and eating. Dwelling unit shall also mean a condominium unit.

Entry Door of a Dwelling means any door of a dwelling which provides access to the common areas of the dwelling from the exterior of the dwelling except that when there are two doors which enclose an entryway between the common areas of the dwelling and the exterior of the dwelling it shall mean either of the doors.

Entry Door of a Dwelling Unit means any door of a dwelling unit which provides access to the common areas of the dwelling or access to the outside of the dwelling.

Exterior Openable Window means any window designed and installed to open which opens to the common interior areas of the dwelling or to the outside of the dwelling.
Exterminate means to eliminate insects and rodents.

Garbage means the animal, vegetable or other organic waste resulting from the handling, preparing, cooking, consumption or cultivation of food, and containers and cans which have contained food unless such containers and cans have been cleaned or prepared for recycling.

Habitable Room means every room or enclosed floor space used or intended to be used for living, sleeping, cooking, or eating purposes, excluding rooms containing toilets, bathtubs or showers and excluding laundries, pantries, foyers, communicating corridors, closets and storage spaces.

Historic building means any building covered by 105 CMR 410.000 which meets the definition of historic building as defined in 780 CMR 3409.0.

Infestation means the recurrent presence of insects and/or rodents.

Legal remedy means any common law and other rights guaranteed by judicial decision, or the laws or regulations of the Commonwealth of Massachusetts which are intended to protect the rights and interests of the occupants affected by violations of 105 CMR 410.000 whether such provision authorizes an affirmative civil action, criminal penalties, a defense to an action or claim by another.

Means of Egress means a continuous and unobstructed path of travel from any point in a dwelling to an abutting public way (See 780 CMR 1002.0).

Mobile Dwelling Unit means a dwelling unit built on a chassis and containing electrical, plumbing, and sanitary facilities and designed to be installed on a temporary or permanent foundation for permanent living quarters.

Occupant means every person living or sleeping in a dwelling.

Owner means every person who alone or severally with others:

(1) has legal title to any dwelling, dwelling unit, mobile dwelling unit, or parcel of land,vacant or otherwise, including a mobile home park; or

(2) has care, charge or control of any dwelling, dwelling unit, mobile dwelling unit or parcel of land, vacant or otherwise, including a mobile home park, in any capacity including but not limited to agent, executor, executrix, administrator, administratrix, trustee or guardian of the estate of the holder of legal title; or

(3) is a mortgagee in possession of any such property; or

(4) is an agent, trustee or other person appointed by the courts and vested with possession or control of any such property; or

(5) is an officer or trustee of the association of unit owners of a condominium. Each such person is bound to comply with the provisions of these minimum standards as if he were the owner. Owner also means every person who operates a rooming house.

Person means every individual, partnership, corporation, firm, association, or group, including a city, town, county or other governmental unit, owning property or carrying on an activity regulated by 105 CMR 410.000.

Provide means to supply and pay for.

Representative or Occupant's Representative means any adult person designated and duly authorized to act on the occupant's behalf, including, but not limited to, any person or group designee from a tenant's organization or other community group.

Rooming House means every dwelling or part thereof which contains one or more rooming units in which space is let or sublet for compensation by the owner or operator to four or more persons not within the second degree of kindred to the person compensated. Boarding houses, hotels, inns, lodging houses, dormitories and other similar dwelling places are included, except to the extent that they are governed by stricter standards elsewhere created; provided that the provisions of 105 CMR 410.000 shall not apply to any hospital, sanitorium, convalescent or nursing home, infirmary or boarding home for the aged licensed by the Department of Public Health in accordance with the provisions of M.G.L. c. 111, § 51 or 71.

Rooming Unit means the room or group of rooms let to an individual or household for use as living and sleeping quarters but not for cooking, whether or not common facilities for cooking are made available; provided, that cooking facilities shall not be deemed common if they can be reached only by passing through any part of the dwelling unit or rooming unit of another.

Rubbish means combustible and noncombustible waste materials, except garbage, and includes but is not limited to such material as paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, grass clippings, tin cans, metals, mineral matter, glass, crockery, dust, and the residue from the burning of wood, coal, coke and other combustible materials. Stairway means any group of stairs consisting of three or more risers.

Temporary Housing means any tent, mobile dwelling unit, or other structure used for human shelter which is designed to be transportable and which is not attached to the ground, to another structure, or to any utility system on the same premises for more than 30 days.

Use Group R-3 means all buildings arranged for occupancy as one or two family dwelling units, including not more than five lodgers per family and multiple single family dwellings where each unit has an independent means of egress and is separated by a two-hour fire separation assembly. Exceptions:

(1) In multiple single-family dwellings that are equipped throughout with an approved sprinkler system installed in accordance with 780 CMR 906.2.1 or 906.2.2, the fire resistance rating of the dwelling unit separation shall not be less than one hour. Dwelling unit separation wall shall be constructed as fire partitions.

(2) In multiple single-family dwellings that are equipped throughout with an approved automatic sprinkler system installed in accordance with 780 CMR 906.2.3, a two hour fire separation assembly shall be provided between each pair of dwelling units. The fire resistance rating between each dwelling unit shall not be less than one hour and shall be constructed as a fire partition (780 CMR 310.5).

Use Group R-4 means all detached one and two family dwellings not more than three stories in height and all accessory structures (780 CMR 310.6).

Violation means any condition in a dwelling, dwelling unit, mobile dwelling unit, or rooming house or upon a parcel of land which fails to meet any requirement of 105 CMR 410.000.

Water Conservation Device means for all showers, shower stalls, shower compartments or shower baths, a low-flow showerhead which shall have a maximum flow rate not exceeding 2½ gallons of water per minute, for all faucets a maximum flow rate not exceeding two and 2/10 gallons of water per minute and for all water closets, ultra-low-flush water closets not exceeding one and 6/10 gallons of water per flush, contained within a dwelling unit.

Water Submetering means the use of a meter by an owner who receives water from a water company, as defined in M.G.L. c. 186, § 22, which meter measures water supplied to a dwelling unit to enable the owner to charge the tenant of the dwelling unit separately for water usage, or which meter measures water supplied to a common area.

410.100: Kitchen Facilities

(A) Every dwelling unit, and every rooming house where common cooking facilities are provided, shall contain suitable space to store, prepare and serve foods in a sanitary manner. The owner shall provide within this space:

(1) A kitchen sink of sufficient size and capacity for washing dishes and kitchen utensils; and

(2) a stove and oven in good repair (*see* 105 CMR 410.351) except and to the extent the occupant is required to do so under a written letting agreement; and

(3) space and proper facilities for the installation of a refrigerator.

(B) The facilities required in 105 CMR 410.100(A) shall have smooth and impervious surfaces and be free from defects that make them difficult to keep clean, or creates an accident hazard.

410.150: Washbasins, Toilets, Tubs, and Showers

The owner shall provide no less than the following:

(A) For each dwelling unit:

(1) A toilet with a toilet seat in a room which is not used for living, sleeping, cooking or eating purposes and which affords privacy to a person within said room.

(2) A wash basin in the same room as the toilet, or if the wash basin cannot be placed in the same room as the toilet, it shall be placed in close proximity to the door leading directly into the room in which the toilet is located. The kitchen sink may not be substituted for the wash basin required in 105 CMR 410.150(A).

(3) A bathtub or shower in the same room as the toilet or in another room which is not used for living, sleeping, cooking or eating purposes and which affords privacy to a person within said room.

(4) Each room which contains a toilet, bathtub or shower shall be fitted with a door which is capable of being closed.

(B) For no more than each eight occupants of rooming units and rooming houses who are not otherwise provided with these facilities, in a room not used for living, sleeping, cooking or eating purposes and which affords privacy to a person within said room:

(1) One toilet with a toilet seat and wash basin in the same room; provided, that where more than one toilet is required in any toilet room used exclusively by males, urinals may be substituted for up to ½ of the total number of toilets required, on the basis of one urinal substituted for one toilet; and

(2) One shower or bathtub in the same room as the toilet and wash basin or in another room not used for living, sleeping, cooking or eating purposes and which affords privacy to a person within said room.

(3) In a room with more than one toilet, each toilet shall be separated by walls or partitions which afford privacy.

(C) Toilet, bathtub and shower facilities as required in 105 CMR 410.150(A) and 410.150(B) shall be accessible from within the building and shall be so placed as not to require passing through any part of another dwelling unit or rooming unit.

(D) The fixtures as required in 105 CMR 410.150(A) and 410.150(B) shall have smooth and impervious surfaces and be free from defects which make them difficult to keep clean, or create an accident hazard.

410.151: Shared Facilities

The owner of any dwelling in which any toilet, wash basin, shower or bathtub is to be shared by the occupants of more than one dwelling unit or one rooming unit shall maintain that toilet, wash basin, shower, bathtub, walls and floors in a clean and sanitary condition, which shall include the cleaning and sanitizing of said fixtures at least once every 24 hours.

410.152: Privies and Chemical Toilets Prohibited; Exceptions

No privy or chemical toilet shall be constructed or continued in use; provided, that the board of health may approve in writing the construction or continued use of any privy or chemical toilet which it determines will not (a) endanger the health of any person; or (b) cause objectionable odors or other undue annoyance. When so approved, a privy or chemical toilet may, subject to written authorization of the board of health in accordance with 310 CMR 15.00, qualify as a toilet within the requirements of 105 CMR 410.150(A) (*see* 105 CMR 410.840).
In no event may a privy be located within 30 feet of any building used for sleeping or eating, or of any lot line or street.

410.180: Potable Water

The owner shall provide, for the occupant of every dwelling, dwelling unit, and rooming unit, a supply of potable water sufficient in quantity and pressure to meet the ordinary needs of the occupant, connected with the public water supply system, or with any other source that the board of health has determined does not endanger the health of any potential user. (*See* 105 CMR 410.350 through 410.352).

In dwellings that are in compliance with the requirements of M.G.L. c. 186, § 22, the owner may charge the occupants for actual water usage in accordance with M.G.L. c. 186, § 22. An owner may not shut off or refuse water service to an occupant on the basis that the occupant has not paid a separately assessed water usage charge.

Examination of the water system shall include an examination of the plumbing system and its actual performance. If possible, such examination shall occur at the times and under such conditions as the occupant has identified the system as being insufficient.

410.190: Hot Water

The owner shall provide and maintain in good operating condition the facilities capable of heating water. The owner shall also provide the hot water for use at a temperature of not less than 110°F (43° C) and in a quantity and pressure sufficient to satisfy the ordinary use of all plumbing fixtures which normally need hot water for their proper use and function, unless and to the extent the occupant is required to provide fuel for the operation of the facilities under a written letting agreement. The hot water shall not exceed 130°F (54° C).

Inspection of the hot water system shall include an examination of the hot water system and its actual performance. If possible, such examination shall occur at the times and under such conditions as the occupant has identified the system to be insufficient.

410.200: Heating Facilities Required

(A) The owner shall provide and maintain in good operating condition the facilities for heating every habitable room and every room containing a toilet, shower or bathtub to such temperature as required under 105 CMR 410.201.

(B) Portable space heaters, parlor heaters, cabinet heaters, room heaters and any similar heaters having a barometric fed fuel control and its fuel supply tank located less than 42 inches from the center of the burner as well as the type of heating appliance adapted for burning kerosene, range oil or number one fuel oil and any portable wick type space heaters shall not be used and shall not meet the requirements of 105 CMR 410.200. (*See* M.G.L. c. 148, §§ 5A and 25B.)

410.201: Temperature Requirements

The owner shall provide heat in every habitable room and every room containing a toilet, shower, or bathtub to at least 68°F (20° C) between 7:00 A.M. and 11:00 P.M. and at least 64°F (17° C) between 11:01 P.M. and 6:59 A.M. every day other than during the period from June 15th to September 15th, both inclusive, in each year except and to the extent the occupant is required to provide the fuel under a written letting agreement. The temperature shall at no time exceed 78°F (25° C) during the heating season. The temperature may be read and the requirement shall be met at a height of five feet above floor level on a wall any point more than five feet from the exterior wall. The number of days per year during which heat must be provided in accordance with 105 CMR 410.000 may be increased or decreased through a variance granted in accordance with the provisions of 105 CMR 410.840 notwithstanding the prohibitions of the first clause of the first sentence of 105 CMR 410.840(A).

410.202: Venting

Space heaters and water heaters, except electrical ones, shall be properly vented to a chimney or vent leading to the outdoors.

410.250: Habitable Rooms Other than Kitchen -- Natural Light and Electrical Outlets

The owner shall provide for each habitable room other than a kitchen:

(A) transparent or translucent glass which admits light from the outdoors and which is equal in area to no less than 8% of the entire floor area of that room.

(B) two separate wall-type convenience outlets, or one such outlet and one electric light fixture. The outlets shall be placed in practical locations and shall insofar as practicable, be on different walls and at least ten feet apart. (*See* 105 CMR 410.351.)

410.251: Kitchen Lighting and Electrical Outlets

The owner shall provide for each kitchen:

(A) one electric light fixture;

(B) two wall-type convenience outlets located in convenient locations; and

(C) For each kitchen over 70 square feet, transparent or translucent glass which admits light from the outdoors and which is equal in area to no less than 8% of the entire floor area of that kitchen.

410.252: Bathroom Lighting and Electrical Outlets

The owner shall provide in each room containing a toilet, bathtub, or shower one electric light fixture. (*See* 105 CMR 410.150(A)(1) and 410.150(B).)

410.253: Light Fixtures Other than in Habitable Rooms or Kitchens

(A) The owner shall provide and so locate electric light switches and fixtures in good working order so that illumination may be provided for the safe and reasonable use of every laundry, pantry, foyer, hallway, stairway, closet, storage place, cellar, porch, exterior stairway and passageway.

(B) The owner shall provide working incandescent light bulbs or fluorescent tubes in all required light fixtures in all common areas of any dwelling.

410.254: Light in Passageways, Hallways, and Stairways

(A) Except as allowed in 105 CMR 410.254(B), the owner shall provide light 24 hours per day so that illumination alone or in conjunction with natural lighting shall be at least one foot candle as measured at floor level, in every part of all interior passageways, hallways, foyers and stairways used or intended for use by the occupants of more than one dwelling unit or rooming unit:

(B) In a dwelling containing three or fewer dwelling units, the light fixtures used to illuminate a common hallway, passageway, foyer and/or stairway may be wired to the electric service serving an adjacent dwelling unit provided that if the occupant of such dwelling unit is responsible for paying for the electric service to such dwelling unit:

(1) a written agreement shall state that the occupant is responsible for paying for light in the common hallway, passageway, foyer and/or stairway; and

(2) the owner shall notify the occupants of the other dwelling units.

410.255: Amperage

The electrical service supplying each dwelling, dwelling unit, rooming house and/or rooming unit shall supply sufficient amperage to meet the reasonable needs of the occupants. Should the amperage be determined to be inadequate it shall be corrected so that it meets the amperage requirements of 527 CMR 12.00: *The Massachusetts Electrical Code*.

410.256: Temporary Wiring

No wiring shall lie under a rug or other floor covering, nor shall any extend through a doorway or other opening in a structural element. No temporary wiring shall be used or made available for use by any owner or occupant; provided, that extension cords which connect portable electric appliances or fixtures to convenience outlets shall not be considered temporary wiring.

410.257: Light Obstructions

If any light obstructing structure is located less than three feet from the outside of and extends to a level above the lower level of the transparent or translucent glass required by 105 CMR 410.250(A) and 410.251(C), that portion so obstructed shall not be included as contributing to the required minimum total glass area.

410.258: Exemption of Dwellings More than 600 Feet from Electrical Service

The provisions of 105 CMR 410.250 through 410.257 regarding the furnishing of electrical facilities shall apply only if a source of electricity is available from power lines within 600 feet of the dwelling.

410.280: Natural and Mechanical Ventilation

The owner shall provide for each habitable room, and room containing a toilet, bathtub or shower, ventilation to the outdoors consisting of:

(A) windows, skylights, doors or transoms in the exterior walls or roofs that can be easily opened to a minimum of 4% of the floor area of that habitable room or room containing a toilet, bathtub or shower, provided, that a skylight which if open exposes the interior of the dwelling to direct rainfall shall not satisfy this requirement; or

(B) Mechanical ventilation capable of exhausting air at the following rates:

Occupancy Classification	Required Air Changes Per Hour
Habitable rooms other than bath, toilet or shower rooms	2
Bath, toilet or shower rooms	5

410.281: Ventilation Shut-off

Each mechanical ventilation system required by 105 CMR 410.280(B) shall be equipped with an readily accessible means for either shut-off or volume reduction, and any other ventilation system shall be equipped with a readily accessible means for shut-off. (*See* 105 CMR 410.351.)

410.300: Sanitary Drainage System Required

The owner shall provide, for each dwelling, a sanitary drainage system connected to the public sewerage system, provided, that if, because of distance or ground conditions, connection to a public sewerage system is not practicable, the owner shall provide, and shall maintain in a sanitary condition, a means of sewage disposal which is in compliance with 310 CMR 15.00: *Subsurface Disposal of Sanitary Sewage (Title V)*. *(See* 105 CMR 410.840.)

In dwellings that are in compliance with the requirements of M.G.L. c. 186, § 22, the owner may charge the occupants for the cost of sewer service in accordance with M.G.L. c. 186, § 22.

410.350: Plumbing Connections

(A) Every required kitchen sink, wash basin and shower or bathtub shall be connected to the hot and cold water lines of the water distribution system (*See* 105 CMR 410.180) and to a sanitary drainage system (*See* 105 CMR 410.300) in accordance with accepted plumbing standards.

(B) Every provided toilet shall be connected to the water distribution system (See 105 CMR 410.180) and to a sanitary drainage system (*See* 105 CMR 410.300) in accordance with accepted plumbing standards.

410.351: Owner's Installation and Maintenance Responsibilities

The owner shall install or cause to be installed, in accordance with accepted plumbing, gasfitting and electrical wiring standards, and shall maintain free from leaks, obstructions or other defects, the following:

(A) all facilities and equipment which the owner is or may be required to provide including, but not limited to, all sinks, washbasins, bathtubs, showers, toilets, waterheating facilities, gas pipes, heating equipment, water pipes, owner installed stoves and ovens, catch basins, drains, vents and other similar supplied fixtures; the connections to water, sewer and gas lines; the subsurface sewage disposal system, if any; all electrical fixtures, outlets and wiring, smoke detectors and carbon monoxide alarms, and all heating and ventilating equipment and appurtenances thereto; and

(B) all owner-installed optional equipment, including but not limited to, refrigerators, dishwashers, clothes washing machines and dryers, garbage grinders, and submetering devices designed to measure the usage of electricity, gas or water.

410.352: Occupant's Installation and Maintenance Responsibilities

(A) The occupant shall install in accordance with accepted plumbing, heating, gas fitting, and electrical wiring standards, and shall maintain free from leaks, obstructions and other defects, all occupant owned and installed equipment such as, but not limited to, refrigerators, clothes washing machines and dryers, dishwashers, stoves, garbage grinders and electrical fixtures.

(B) Every occupant of a dwelling unit shall keep all toilets, wash basins, sinks, showers, bathtubs, stoves, refrigerators and dishwashers in a clean and sanitary condition and exercise reasonable care in the proper use and operation thereof.

410.353: Asbestos Material

Every owner shall maintain all asbestos material in good repair, and free from any defects including, but not limited to, holes, cracks, tears or any looseness which may allow the release of asbestos dust, or any powdered, crumbled or pulverized asbestos material. Every owner shall correct any violation of 105 CMR 410.353 in accordance with the regulations of the Department of Environmental Protection appearing at 310 CMR 7.00 and in accordance with the regulations of the Department of Labor and Workforce Development appearing at 453 CMR 6.00.

410.354: Metering of Electricity, Gas and Water

(A) The owner shall provide the electricity and gas used in each dwelling unit unless

(1) Such gas or electricity is metered through a meter which serves only the dwelling unit or other area under the exclusive use of an occupant of that dwelling unit, except as allowed by 105 CMR 410.254(B); and

(2) A written letting agreement provides for payment by the occupant.

(B) If the owner is required, by 105 CMR 410.000 or by a written letting agreement consistent with 105 CMR 410.000, to pay for the electricity or gas used in a dwelling unit, then such electricity or gas may be metered through meters which serve more than one dwelling unit.

(C) If the owner is not required to pay for the electricity or gas used in a dwelling unit, then the owner shall install and maintain wiring and piping so that any such electricity or gas used in the dwelling unit is metered through meters which serve only such dwelling unit, except as allowed by 105 CMR 410.254(B).

(D) If the owner intends to separately bill the occupant for water or sewer services in accordance with the provisions of M.G.L. c. 186, § 22, then the owner must be in compliance with all requirements of M.G.L. c. 186, § 22, including, but not limited to:

(1) Installing and maintaining, when necessary, a water submetering device that measures only water that is supplied for the exclusive use of the particular dwelling unit and only to an area within the exclusive possession and control of the occupant of such dwelling unit;

(2) Installing, or causing to be installed, water conservation devices on all showers, faucets, and toilets in the dwelling unit;

(3) Having a written letting agreement with the occupant that describes the details of the water submetering and water billing arrangements; and

(4) Filing a certificate, on a form provided by the Department of Public Health, with the Board of Health or other appropriate municipal agency charged with enforcing the State Sanitary Code, and signed by the owner under the pains and penalties of perjury, that the dwelling unit is in compliance with M.G.L. c. 186, § 22. The owner shall have a licensed plumber sign the certificate certifying that the water submetering devices and ultra-low-flush toilets have been installed in accordance with accepted plumbing standards and the requirements of M.G.L. c. 186, § 22, and shall attach appropriate documentation to verify the services provided by the licensed plumber. The owner shall also provide a copy of the certificate to the occupants of each dwelling unit with the written letting agreement that describes the details of the water submetering and water billing arrangements.

(E) The owner shall allow occupants to have access to any water submeters that affect their dwelling unit in order to ensure that such submeters are functioning properly.

410.400: Minimum Square Footage

(A) Every dwelling unit shall contain at least 150 square feet of floor space for its first occupant, and at least 100 square feet of floor space for each additional occupant, the floor space to be calculated on the basis of total habitable room area.

(B) In a dwelling unit, every room occupied for sleeping purposes by one occupant shall contain at least 70 square feet of floor space; every room occupied for sleeping purposes by more than one occupant shall contain at least 50 square feet of floor space for each occupant.

(C) In a rooming unit, every room occupied for sleeping purposes by one occupant shall contain at least 80 square feet of floor space; every room occupied for sleeping purposes by more than one occupant shall contain at least 60 square feet for each occupant.

410.401: Ceiling Height

(A) No room shall be considered habitable if more than ¾ of its floor area has a floor-to-ceiling height of less than seven feet.

(B) In computing total floor area for the purpose of determining maximum permissible occupancy, that part of the floor area where the ceiling height is less than five feet shall not be considered.

410.402: Grade Level

No room or area in a dwelling may be used for habitation if more than ½ of its floor-to-ceiling height is below the average grade of the adjoining ground and is subject to chronic dampness.

410.430: Temporary Housing Allowed Only with Board of Health Permission

No temporary housing may be used except with the written permission of the board of health.

410.431: Any Exceptions to Minimum Standards Must Be Specified

All temporary housing shall be subject to the requirements of these minimum standards, except as the board of health may provide in its written permission. (*See* 105 CMR 410.840.)

410.450: Means of Egress

Every dwelling unit, and rooming unit shall have as many means of exit as will allow for the safe passage of all people in accordance with 780 CMR 104.0, 105.1, and 805.0 of the Massachusetts State Building Code.

410.451: Egress Obstructions

No person shall obstruct any exit or passageway. The owner is responsible for maintaining free from obstruction every exit used or intended for use by occupants of more than one dwelling unit or rooming unit. The occupant shall be responsible for maintaining free from obstruction all means of exit leading from his unit and not common to the exit of any other unit.

410.452: Safe Condition

The owner shall maintain all means of egress at all times in a safe, operable condition and shall keep all exterior stairways, fire escapes, egress balconies and bridges free of snow and ice, provided, however, in those instances where a dwelling has an independent means of egress, not shared with other occupants, and a written letting agreement so states, the occupant is responsible for maintaining free of snow and ice, the means of egress under his or her exclusive use and control. All corrodible structural parts thereof shall be kept painted or otherwise protected against rust and corrosion. All wood structural members shall be treated to prevent rotting and decay. Where these structural elements tie directly into the building structural system, all joints shall be sealed to prevent water from damaging or corroding the structural elements.

410.480: Locks

The owner shall provide, install and maintain locks so that:

(A) Every dwelling unit shall be capable of being secured against unlawful entry.

(B) Every door of a dwelling unit shall be capable of being secured from unlawful entry.

(C) The main entry door of a dwelling containing more than three dwelling units shall be so designed or equipped so as to close and lock automatically with a lock, including a lock with an electrically-operated striker mechanism, a self-closing door and associated equipment. Every door of the main common entryway and every exterior door into said dwelling, other than the door of such main common entryway which is equipped as provided in the preceding sentence shall be equipped with an operating lock. (M.G.L. c. 143, § 3R.)

(D) Every entry door of a dwelling unit or rooming unit shall be capable of being secured from unlawful entry.

(E) Every openable exterior window shall be capable of being secured.

(F) Locking devices shall comply with the requirements of 780 CMR 1017.4.1 to avoid entrapment in the building.

410.481: Posting of Name of Owner

An owner of a dwelling which is rented for residential use, who does not reside therein and who does not employ a manager or agent for such dwelling who resides therein, shall post and maintain or cause to be posted and maintained on such dwelling adjacent to the mailboxes for such dwelling or elsewhere in the interior of such dwelling in a location visible to the residents a notice constructed or durable material, not less than 20 square inches in size, bearing his name, address and telephone number. If the owner is a realty trust or partnership, the name, address and telephone number of the managing trustee or partner shall be posted. If the owner is a corporation, the name, address and telephone number of the president of the corporation shall be posted. Where the owner employs a manager or agent who does not reside in such dwelling, such manager or agent's name, address and telephone number shall also be included in the notice. (*See* M.G.L. c. 143, § 3S.)

410.482: Smoke Detectors and Carbon Monoxide Alarms

(A) Owners shall provide, install, and maintain in operable condition smoke detectors and carbon monoxide alarms in every dwelling that is required to be equipped with smoke detectors and carbon monoxide alarms in accordance with any provision of the Massachusetts General Laws and any applicable regulations of the State Board of Fire Prevention (527 CMR), State Board of Building Regulations and Standards (780 CMR), or the Board of Examiners of Plumbers and Gas Fitters (248 CMR).

(B) The board of health shall immediately notify the chief of the local fire department of any violation of 105 CMR 410.482 which is observed during an inspection of any dwelling.

(C) If any dwelling is found by the local fire department to be adequately equipped with smoke detectors and carbon monoxide alarms, the board of health shall not be authorized

by 105 CMR 410.482 to impose any additional or differing smoke detector or carbon monoxide alarm requirement beyond that which has been found sufficient by the local fire department.

410.483: Auxiliary Emergency Lighting Systems and Exit Signs

The owner of every multiple dwelling of ten or more units shall provide such dwelling with an auxiliary emergency lighting system independent of the conventional lighting system, and with lighted signs indicating both a primary and secondary means of egress, by a diagram or signal so as to assure recognition by all persons regardless of their English speaking ability. Such lighting system signs shall be maintained in good working order in compliance with any applicable regulations promulgated by the Commissioner of Public Safety (See 780 CMR 1023.0, 780 CMR 1024.0 and M.G.L. c.143, § 21D).

410.484: Building Identification

The owner shall affix to every building covered by 105 CMR 410.000, a number representing the address of such building. The number shall be of a nature and size and shall be situated on the building so that, to the extent practicable, it is visible from the nearest street providing vehicular access to such building (M.G.L. c. 148, § 59).

410.500: Owner's Responsibility to Maintain Structural Elements

Every owner shall maintain the foundation, floors, walls, doors, windows, ceilings, roof, staircases, porches, chimneys, and other structural elements of his dwelling so that the dwelling excludes wind, rain and snow, and is rodent-proof, watertight and free from chronic dampness, weathertight, in good repair and in every way fit for the use intended. Further, he shall maintain every structural element free from holes, cracks, loose plaster, or other defect where such holes, cracks, loose plaster or defect renders the area difficult to keep clean or constitutes an accident hazard or an insect or rodent harborage.

410.501: Weathertight Elements

(A) A window shall be considered weathertight only if:

(1) all panes of glass are in place, unbroken and properly caulked; and

(2) the window opens and closes fully without excessive effort; and

(3) exterior cracks between the prime window frame and the exterior wall are caulked; and

(4) one of the following conditions is met:

(a) a storm window is affixed to the prime window frame, with caulking installed so as to fill exterior cracks between the storm window frame and the prime window frame; or

(b) weatherstripping is applied such that the space between the window sash and the prime window frame is no larger than 1/16 inch at any point on the perimeter of the sash, in the case of double hung windows and 1/32 inch in the case of casement windows; or

(c) the window sash is sufficiently well-fitted such that, without weatherstripping, the space between the window sash and the prime window frame is no larger than 1/16 inch at any point on the perimeter of the sash in the case of double hung windows and 1/32 inch in the case of casement windows.

(B) An exterior door or a door leading from a dwelling unit to a common passageway shall be considered to be weathertight only if:

(1) all panes of glass are in place, unbroken and properly caulked; and

(2) the door opens and closes fully without excessive effort; and

(3) exterior cracks between the prime door frame and the exterior wall are caulked; and

(4) one of the following conditions is met:

(a) a storm door is affixed to the prime door frame, with caulking installed so as to fill exterior cracks between the storm door frame and the prime door frame; or

(b) weatherstripping is applied such that the space between the door and the prime door frame is no larger than 1/16 inch at any point on the perimeter of the door or

(c) the door is sufficiently well-fitted such that, without weather-stripping, the space between the door and the prime door frame is no larger than 1/16 inch at any point on the sides of the door or _ inch at any point on the top or bottom of the door.

(C) A wall, floor, ceiling or other structural element shall be considered weathertight only if all cracks and spaces not part of heating, ventilating or air conditioning systems are caulked or filled in as to prevent infiltration of exterior air or moisture.

410.502: Use of Lead Paint Prohibited

No paint that contains lead shall be used in painting any surface of any dwelling. (*See* 105 CMR 460.000.)

410.503: Protective Railings and Walls

The owner of all dwellings shall provide:

(A) A safe handrail for every stairway that is used or intended for use by the occupant as required by 780 CMR: Massachusetts State Building Code.

(B) A wall or guardrail on the open side of all stairways no less than 30 inches in height. Any such guardrail replaced or constructed after August 28, 1997 (effective date of Massachusetts State Building Code, Sixth Edition) shall be not less than 34 inches in height (780 CMR 1022.2.2 and 3603.14.2.1).

(C) A wall or guardrail at least 36 inches in height, enclosing every porch, balcony, mezzanine, landing, roof or similar place, which is 30 inches or more above the ground and that is used or intended for use by the occupants. Any such wall or guardrail for other than Use Group R-4 and along opens sided floor areas, mezzanines and landings in occupancies in Use Group R-3, replaced or constructed after August 28, 1997, shall not be less than 42 inches in height (780 CMR 102 and 3603.14).

(D) Between all required guardrails and open handrails, balusters placed at intervals of no more than six inches, or any other ornamental pattern between the guardrail or handrail and floor or stair such that a sphere six inches in diameter can not pass through the opening. Any balusters or ornamental work constructed or replaced after August 28, 1997 shall have no space greater than 4½ inches and in all use groups other than R-4, shall not be constructed as to provide a ladder effect (780 CMR 1021 and 3603.14).

410.504: Non-absorbent Surfaces

The owner shall provide:

(A) On the floor surfaces of every room containing a toilet, shower or bathtub and every kitchen and pantry, a smooth, noncorrosive, nonabsorbent and water proof covering. This shall not prohibit the use of carpeting in kitchens and bathrooms, nor the use of wood in the kitchen, provided they meet the following qualifications:

(1) Carpeting must contain a solid, nonabsorbent, water repellent backing which will prevent the passage of moisture through it to the floor below; and

(2) Wood flooring must have a water resistant finish and have no cracks to allow the accumulation of dirt and food, or the harborage of insects.

(B) On the walls of every room containing a toilet, shower or bathtub up to a height of 48 inches, a smooth noncorrosive, nonabsorbent and waterproof covering.

(C) On wall areas above built-in bathtubs having installed shower heads and in shower compartments up to height not less than six feet above the floor level, with a smooth, noncorrosive, nonabsorbent waterproof covering. Such wall shall form a watertight joint with each other and with either the tub, receptor or shower floor.

410.505: Occupant's Responsibility Respecting Structural Elements

The occupant shall exercise reasonable care in the use of the floors, walls, doors, windows, ceilings, roof, staircases, porches, chimneys, and other structural elements of the dwelling.

410.550: Extermination of Insects, Rodents and Skunks

(A) The occupant of a dwelling containing one dwelling unit shall maintain the unit free from all rodents, skunks, cockroaches and insect infestation, and shall be responsible for exterminating them, provided, however, that the owner shall maintain any screen, fence or other structural element necessary to keep rodents and skunks from entering the dwelling.

(B) The owner of a dwelling containing two or more dwelling units shall maintain it and its premises free from all rodents, skunks, cockroaches and insect infestation and shall be responsible for exterminating them.

(C) The owner of a rooming house shall maintain it and its premises free from all rodents, skunks, cockroaches and insect infestation, and shall be responsible for exterminating them.

(D) Extermination shall be accomplished by eliminating the harborage places of insects and rodents, by removing or making inaccessible materials that may serve as their food or breeding ground, by poisoning, spraying, fumigating, trapping or by any other recognized and legal pest elimination method. All use of pesticides within the interior of a dwelling, dwelling unit, rooming house, or mobile home shall be in accordance with applicable laws and regulations of the Department of Food and Agriculture's Pesticide Board, including those appearing at 333 CMR 13.00, which provide, among other things, that pesticide applicators or their employers must give at least 48 hours pre-notification to occupants of all residential units prior to any routine commercial application of pesticides for the control of indoor household or structural indoor pests.

410.551: Screens for Windows

The owner shall provide screens for all windows designed to be opened on the first four floors opening directly to the outside from any dwelling unit or room unit provided, that in an owner-occupied unit, the owner need provide screens for only those windows used for ventilation. All new or replacement screens shall be of not less than 16 mesh per square inch.
Said screens:

(1) shall cover that part of the window that is designed to be opened but in no case less than the area as required in 105 CMR 410.280(A); and

(2) shall be tight fitting as to prevent the entrance of insects and rodents around the perimeter.

(3) Expandable temporary screens shall not be deemed to satisfy the requirements of 105 CMR 410.551(1) or (2).

410.552: Screens for Doors

The owner shall provide a screen door for all doorways opening directly to the outside from any dwelling unit or rooming unit where the screen door will be permitted to slide to the side or open in an outward direction, provided, that in an owner-occupied unit, the owner need provide screens only for those doorways used for ventilation. All new or replacement screens in screen doors shall be of not less that 16 mesh per square inch.
Said screen door:

(1) shall be equipped with a self-closing device except where the screen is designed to slide to the side; and

(2) shall be tight-fitting as to prevent the entrance of insects and rodents around the perimeter; and

410.553: Installation of Screens

The owner shall provide and install screens as required in 105 CMR 410.551 and 410.552 so that they shall be in place during the period between April first to October 30th, both inclusive, in each year.

410.600: Storage of Garbage and Rubbish

(A) Garbage or mixed garbage and rubbish shall be stored in watertight receptacles with tight-fitting covers. Said receptacles and covers shall be of metal or other durable, rodent-proof material. Rubbish shall be stored in receptacles of metal or other durable, rodent-

proof material. Garbage and rubbish shall be put out for collection no earlier than the day of collection.

(B) Plastic bags shall be used to store garbage or mixed rubbish and garbage only if used as a liner in watertight receptacles with tight-fitting covers as required in 105 CMR 410.600(A), provided that the plastic bags may be put out for collection except in those places where such practice is prohibited by local rule or ordinance or except in those cases where the Department of Public Health determines that such practice constitutes a health problem. For purposes of the preceding sentence, in making its determination the Department shall consider, among other things, evidence of strewn garbage, torn garbage bags, or evidence of rodents.

(C) The owner of any dwelling that contains three or more dwelling units, the owner of any rooming house, and the occupant of any other dwelling place shall provide as many receptacles for the storage of garbage and rubbish as are sufficient to contain the accumulation before final collection or ultimate disposal, and shall locate them so as to be convenient to the tenant and so that no objectionable odors enter any dwelling.

(D) The occupants of each dwelling, dwelling unit, and rooming unit shall be responsible for the proper placement of his garbage and rubbish in the receptacles required in 105 CMR 410.600(C) or at the point of collection by the owner.

410.601: Collection of Garbage and Rubbish

The owner of any dwelling that contains three or more dwelling units, the owner of any rooming house, and the occupant of any other dwelling place shall be responsible for the final collection or ultimate disposal or incineration of garbage and rubbish by means of:

(A) the regular municipal collection system; or

(B) any other collection system approved by the board of health; or

(C) when otherwise lawful, a garbage grinder which grinds garbage into the kitchen sink drain finely enough to ensure its free passage, and which is otherwise maintained in a sanitary condition; or

(D) when otherwise lawful, a garbage or rubbish incinerator located within the dwelling which is properly installed and which is maintained so as not to create a safety or health hazard; or

(E) when otherwise lawful, by backyard composting of compostable material, provided that the composting operation does not attract rodents or other vectors and does not create a nuisance, and provided further that in the case of composting by an occupant, the occupant obtain the prior written permission of the owner.

(F) any other method of disposal which does not endanger any person and which is approved in writing by the board of health. (*See* 105 CMR 410.840.)

410.602: Maintenance of Areas Free from Garbage and Rubbish

(A) Land. The owner of any parcel of land, vacant or otherwise, shall be responsible for maintaining such parcel of land in a clean and sanitary condition and free from garbage, rubbish or other refuse. The owner of such parcel of land shall correct any condition caused by or on such parcel or its appurtenance which affects the health or safety, and well-being of the occupants of any dwelling or of the general public.

(B) Dwelling Units. The occupant of any dwelling unit shall be responsible for maintaining in a clean and sanitary condition and free of garbage, rubbish, other filth or causes of sickness that part of the dwelling which he exclusively occupies or controls.

(C) Dwellings Containing Less than Three Dwelling Units. In a dwelling that contains less than three dwelling units, the occupant shall be responsible for maintaining in a clean and sanitary condition, free of garbage, rubbish, other filth or causes of sickness the stairs or stairways leading to his dwelling unit and the landing adjacent to his dwelling unit if the stairs, stairways or landing are not used by another occupant.

(D) Common Areas. In any dwelling, the owner shall be responsible for maintaining in a clean and sanitary condition free of garbage, rubbish, other filth or causes of sickness that part of the dwelling which is used in common by the occupants and which is not occupied or controlled by one occupant exclusively.
The owner of any dwelling abutting a private passageway or right-of-way owned or used in common with other dwellings or which the owner or occupants under his control have the right to use or are in fact using shall be responsible for maintaining in a clean and sanitary condition free of garbage, rubbish, other filth or causes of sickness that part of the passageway or right-of-way which abuts his property and which he or the occupants under his control have the right to use, or are in fact using, or which he owns.

410.620: Curtailment Prohibited

No owner or occupant shall cause any service, facility, equipment, or utility which is required to be made available by 105 CMR 410.000 to be removed from or shut off from any occupied dwelling except for such temporary period as may be necessary during actual repairs or alterations and where reasonable notice of curtailment of service is given to the occupant, or during temporary emergencies when curtailment of service is approved by the board of health. If any such service or facility that a person is required to provide by 105 CMR 410.000 or has agreed to supply by a written letting agreement becomes curtailed, that person shall take immediate steps to cause its restoration. (*See* M.G.L. c. 186, § 14.)

410.700: Inspectors Duty to Classify Violations

Any one or more of the conditions specified in 105 CMR 410.750, when found to exist in residential premises, shall always be deemed to be conditions which may endanger or materially impair the health or safety, and well-being of an occupant or the public. The conditions specified in 105 CMR 410.750 are specifically not intended as an exhaustive enumeration of such conditions. In addition to the conditions specified in 105 CMR 410.750, the inspector shall determine if any other violations of 105 CMR 410.100 through 410.620, or any other conditions, are conditions which may endanger or materially impair the health or safety, and well-being of an occupant or the public.

410.750: Conditions Deemed to Endanger or Impair Health or Safety

The following conditions, when found to exist in residential premises, shall be deemed conditions which may endanger or impair the health, or safety and well-being of a person or persons occupying the premises. This listing is composed of those items which are deemed to always have the potential to endanger or materially impair the health or safety, and well-being of the occupants or the public. Because, 105 CMR 410.100 through 410.620 state minimum requirements of fitness for human habitation, any other violation has the potential to fall within this category in any given specific situation but may not do so in every case and therefore is not included in this listing. Failure to include shall in no way be construed as a determination that other violations or conditions may not be found to fall within this category. Nor shall failure to include affect the duty of the local health official to order repair or correction of such violations pursuant to 105 CMR 410.830 through 410.833 nor shall failure to include affect the legal obligation of the person to whom the order is issued to comply with such order.

(A) Failure to provide a supply of water sufficient in quantity, pressure and temperature, both hot and cold, to meet the ordinary needs of the occupant in accordance with 105 CMR 410.180 and 410.190 for a period of 24 hours or longer.

(B) Failure to provide heat as required by 105 CMR 410.201 or improper venting or use of a space heater or water heater as prohibited by 105 CMR 410.200(B) and 410.202.

(C) Shutoff and/or failure to restore electricity, gas or water.

(D) Failure to provide the electrical facilities required by 105 CMR 410.250(B), 410.251(A), 410.253 and the lighting in common area required by 105 CMR 410.254.

(E) Failure to provide a safe supply of water.

(F) Failure to provide a toilet and maintain a sewage disposal system in operable condition as required by 105 CMR 410.150(A)(1) and 410.300.

(G) Failure to provide adequate exits, or the obstruction of any exit, passageway or common area caused by any object, including garbage or trash, which prevents egress in case of an emergency 105 CMR 410.450, 410.451 and 410.452.

(H) Failure to comply with the security requirements of 105 CMR 410.480(D).

(I) Failure to comply with any provisions of 105 CMR 410.600, 410.601, or 410.602 which results in any accumulation of garbage, rubbish, filth or other causes of sickness which may provide a food source or harborage for rodents, insects or other pests or otherwise contribute to accidents or to the creation or spread of disease.

(J) The presence of leadbased paint on a dwelling or dwelling unit in violation of 105 CMR 460.000: *Lead Poisoning Prevention and Control*. (*See* M.G.L c. 111, §§ 190 through 199.)

(K) Roof, foundation, or other structural defects that may expose the occupant or anyone else to fire, burns, shock, accident or other dangers or impairment to health or safety.

(L) Failure to install electrical, plumbing, heating and gasburning facilities in accordance with accepted plumbing, heating, gasfitting and electrical wiring standards or failure to maintain such facilities as are required by 105 CMR 410.351 and 410.352, so as to expose the occupant or anyone else to fire, burns, shock, accident or other danger or impairment to health or safety.

(M) Any defect in asbestos material used as insulation or covering on a pipe, boiler or furnace which may result in the release of asbestos dust or which may result in the release of powdered, crumbled or pulverized asbestos material in violation of 105 CMR 410.353.

(N) Failure to provide a smoke detector or carbon monoxide alarm required by 105 CMR 410.482.

(O) Any of the following conditions which remain uncorrected for a period of five or more days following the notice to or knowledge of the owner of said condition or conditions:

(1) Lack of a kitchen sink of sufficient size and capacity for washing dishes and kitchen utensils or lack of a stove and oven or any defect that renders either inoperable.

(2) Failure to provide a washbasin and shower or bathtub as required in 105 CMR 410.150(A)(2) and 410.150(A)(3) or any defect which renders them inoperable.

(3) Any defect in the electrical, plumbing, or heating system which makes such system or any part thereof in violation of generally accepted plumbing, heating, gasfitting, or electrical wiring standards that do not create an immediate hazard.

(4) Failure to maintain a safe handrail or protective railing for every stairway, porch balcony, roof or similar place as required by 105 CMR 410.503(A) and 410.503(B).

(5) Failure to eliminate rodents, cockroaches, insect infestations and other pests as required by 105 CMR 410.550.

(P) Any other violation of 105 CMR 410.000 not enumerated in 105 CMR 410.750(A) through (O) shall be deemed to be a condition which may endanger or materially impair the health or safety and well-being of an occupant upon the failure of the owner to remedy said condition within the time so ordered by the board of health.

410.800: General Administration

The provisions of 105 CMR 400.000: *State Sanitary Code, Chapter I* shall govern the administration and enforcement of these minimum standards except as supplemented by 105 CMR 410.810 through 410.960.

410.810: Access for Repairs and Alterations

Every occupant of a dwelling, dwelling unit, or rooming unit shall give the owner thereof, or his agent or employees, upon reasonable notice, reasonable access, if possible by appointment, to the dwelling, dwelling unit, or rooming unit for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of 105 CMR 410.000.

410.820: Inspection Upon Request

The board of health shall inspect a dwelling or dwelling unit upon receipt of a written, oral or telephonic request for inspection regardless of whether the person requesting the inspection has previously notified the owner of the dwelling of the condition(s) within the dwelling. All interior inspections shall be done in the company of the occupant or the occupant's representative.

(A) The board of health shall use its best efforts to schedule and complete an inspection at a time mutually satisfactory to the occupant and the board of health:

(1) within 24 hours after a receipt of a request when the condition or conditions alleged to exist include one of the following:

(a) failure to maintain a supply of water connected with a safe water supply as required in 105 CMR 410.180; or

(b) failure to provide heat and to provide or maintain heating facilities in proper condition as required by 105 CMR 410.200 through 410.202; or

(c) failure to provide light as required by 105 CMR 410.254 and 410.253; or

(d) failure to provide and maintain a sanitary drainage system as required by 105 CMR 410.300; or

(e) failure to maintain in safe operating condition any facilities fixtures and systems listed in 105 CMR 410.351; or

(f) termination or failure to restore promptly, water, hot water, heat electricity or gas; and

(g) failure to maintain exits unobstructed and in a safe condition as required by 105 CMR 410.451 and 410.452; or

(h) failure to maintain every entry door of a dwelling or dwelling unit as required by 105 CMR 410.480(B) and 410.480(D); or

(i) failure to maintain a dwelling unit free from leaks as required in 105 CMR 410.500; or

(j) failure to maintain a porch, balcony, roof or exterior stairway in a safe condition as required in 105 CMR 410.500, 410.503(B), and 410.503(C); or

(k) failure to maintain a dwelling or dwelling unit free from rodents, skunks, cockroaches and insect infestation as required by 105 CMR 410.550; or

(2) within five calendar days after receipt of a request when the condition or conditions alleged to exist does not include any of the violations enumerated in 105 CMR 410.820(A)(1).

(B) The board of health shall keep a record of all requests for inspections in a bound book with numbered pages. The information to be recorded shall include but need not be limited to the name, if given, of the person requesting the inspection, the time and date of each such request, the location of the dwelling, the nature of the alleged violation(s) and the date the inspection is conducted. In lieu of the above, the required records may be maintained within a computer system.

410.821: Inspection Form

Each board of health shall adopt and use a printed inspection report form which must include, but need not be limited to, the following:

(A) specifically labelled spaces for:

(1) name of the inspector;

(2) the date and time of the inspection or investigation;

(3) the location of the dwelling or dwelling unit inspected;

(4) the date and time of any scheduled follow-up inspection;

(5) a description of the conditions constituting violations;

(6) a listing of the specific provisions of 105 CMR 410.000 or other applicable laws, ordinances, by-laws, rules or regulations that appear to be violated;

(7) a determination by the official inspecting the premises whether the violations are listed in 105 CMR 410.750, and whether the effect of any violation(s) or conditions not listed in 105 CMR 410.750 may endanger or materially impair the health or safety, and well-being of any person(s) occupying the premises.

(8) the signature of the inspector preceded by the following statement: *This inspection report is signed and certified under the pains and penalties of perjury*.

(B) A brief summary of the legal remedies available to the occupant of the affected premises, followed by this statement:
"*The information presented above is only a summary of the law. Before you decide to withhold your rent or take any other legal action, it is advisable that you consult an attorney. If you cannot afford to consult an attorney, you should contact the nearest Legal Services Office which is (name of Legal Services Office), (address), (telephone number)*."

410.822: Conduct of Inspections

(A) At the time of the inspection, the inspector shall record all violations if any, and shall complete an inspection report form which conforms to the requirements of 105 CMR 410.821(A) and 410.821 (B). If assistance of a specialized inspector, which is not immediately available, is necessary to fully complete the inspection report, such report shall be completed to the fullest extent feasible at the time of the inspection, noting thereon the a reason of possible violations for which a separate inspection by a specialized inspector appears to be necessary. The need for such separate inspection shall in no way delay the normal processing or issuing of orders pursuant to 105 CMR 410.830 through 410.833. The board of health shall use its best efforts to schedule the separate inspection promptly, at a mutually satisfactory time to all individuals involved. A copy of 105 CMR 410.000: *Minimum Standards of Fitness for Human Habitation (State Sanitary Code, Chapter II)* shall be made available upon request, free of charge or at a cost which is no greater than the board's own cost for each copy. A copy shall be made available for

review at no cost.

(B) Each inspection of a dwelling unit shall include at a minimum the condition alleged to be in violation and all those standards found in 105 CMR 410.750(A) through (O) except as otherwise provided in 105 CMR 410.822(B)(1) through 410.822(B)(4). A violation found in a common area shall be considered as a violation which exists in each unit in the dwelling which may be affected by such violations.

(1) An occupant shall be informed of his/her right to a comprehensive inspection at the start of said inspection. A comprehensive inspection will be carried out if the occupant so requests.

(2) The inspection as required in 105 CMR 410.822(B) shall not be required from September 15 to June 15, inclusive, if the complaint relates solely to the lack of heat pursuant to 105 CMR 410.200 or 410.201, however, a comprehensive inspection will be carried out if the occupant so requests.

(3) Where an inspection reveals a condition or conditions which present such an imminent threat to the life, health or safety of the occupants immediate steps must be taken by the inspector to order compliance, an inspection as required in 105 CMR 410.822(B) may be delayed until after such steps are taken, but such inspection shall be completed in a timely manner.

(4) Where a reinspection is made in order to determine compliance with a previously issued order, the inspection may be sufficient if it includes those items previously identified as violations unless additional violations have been identified in a subsequent complaint.

(C) A verbal or written summary of the conditions noted during the inspection shall be given to the occupant or the occupant's representative at the conclusion of the inspection. Such report shall indicate the need for additional inspection by a specialized inspector, if necessary. If a written report is requested at the time of the inspection, it shall be left with the person making the request.

410.830: Correction Orders

If an inspection or examination as provided for in 105 CMR 400.100 (*State Sanitary Code I General Administrative Procedures)* and/or 105 CMR 410.820 (*Minimum Standards of Fitness for Human Habitation (State Sanitary Code, Chapter II)*) reveals that a dwelling does not comply with the provisions of 105 CMR 410.000, the board of health or its designated agent shall:

(A) within 12 hours after the inspection order the owner or occupant to make a good faith effort to correct within 24 hours any of the following violations:

(1) failure to maintain a supply of water connected to a safe water supply as required in 105 CMR 410.180; or

(2) failure to provide heat and to provide or maintain heating facilities in proper condition as required by 105 CMR 410.200 or 410.201; or

(3) failure to provide light as required by 105 CMR 410.254; or

(4) failure to provide and maintain a sanitary drainage system as required by 105 CMR 410.300; or

(5) failure to maintain in safe operating condition any facilities fixtures and systems listed in 105 CMR 410.351; or

(6) termination or failure to restore promptly water, hot water, heat, electricity or gas; or

(7) failure to maintain exits unobstructed as required by 105 CMR 410.451; or

(8) failure to maintain every entry door of a dwelling unit as required by 105 CMR 410.480(D); or

(9) failure to maintain a dwelling unit free from leaks as required by 105 CMR 410.500; or

(10) failure to maintain a porch, balcony, roof or exterior stairway in a safe condition as required by 105 CMR 410.500; or

(11) failure to maintain a dwelling or dwelling unit free from rodents, skunks, cockroaches and insect infestation as required by 105 CMR 410.550.

(B) within seven days after the inspection order the owner or occupant to begin necessary repairs or contract in writing with a third party within five days for correction of all other violations or conditions listed in 105 CMR 410.750, 410.351 and 410.550 and to make a good faith effort to substantially correct all violations within a period determined by the board of health but not exceeding 30 days.

(C) within five days after the dates for compliance specified in an order issued pursuant to 105 CMR 410.830, the board of health shall make an onsite inspection to determine whether there has been compliance with said order; provided, that said inspection shall be made within 24 hours of the dates for compliance specified in an order if one or more of the violations or conditions are determined to be conditions which may endanger the health or safety, and well-being of the occupant(s) as defined in 105 CMR 410.750. An inspection under 105 CMR 410.830 shall comply with the requirements of 105 CMR 410.822.

410.831: Dwellings Unfit for Human Habitation; Hearing; Condemnation; Order to Vacate; Demolition

(A) Finding that a dwelling or portion thereof is unfit for human habitation. If an inspection conducted pursuant to 105 CMR 400.100 or 105 CMR 410.820 reveals that a dwelling or portion thereof is unfit for human habitation, the board of health may (after complying with 105 CMR 410.831(B), (C) or (D), if the dwelling is occupied) issue a written finding that the dwelling or portion thereof is unfit for human habitation. The finding shall include a statement of the material facts and conditions upon which the finding is based.

(B) Prior notification to occupant(s) and owner. If the dwelling or portion thereof is occupied, the board of health shall, prior to issuing a finding under 105 CMR 410.831(A), provide written notice to the occupant(s) and owner which shall include:

(1) Identification of the dwelling (address and apartment number, if any);

(2) A copy of the inspection report;

(3) A statement that the board of health will consider issuing a finding that the dwelling or a specifically identified portion thereof is unfit for human habitation;

(4) A statement that this finding may result in an order of condemnation requiring the owner to secure the dwelling and requiring the occupant(s) to vacate the dwelling.

(5) A statement of the time and place of a public hearing which the board of health will conduct in order to determine whether the dwelling or portion thereof is unfit for human habitation, and whether an order to secure and vacate should be issued.

The notice shall be served on the occupant(s) and owner in accordance with 105 CMR 410.833.

(C) Hearing if dwelling or portion thereof is occupied. If the dwelling or portion thereof is occupied, then the board shall, prior to issuing a finding under 105 CMR 410.831(A), and at least five days after service of the notice required by 105 CMR 410.831(B), conduct a public hearing to determine whether the dwelling or portion thereof is unfit for human habitation and whether an order to secure and to vacate should be issued. At the hearing the occupant(s), owner, or any other affected party shall be given an opportunity to be heard, to present witnesses or documentary evidence and to show why the dwelling or portion thereof should or should not be found unfit for human habitation, and why an order to vacate and an order to close-up should or should not be issued.

(D) Exception to notification and hearing requirements. If at any time the board of health determines in writing that the danger to the life or health of the occupant(s) is so immediate that no delay may be permitted, then the board of health may immediately issue a finding that an occupied dwelling or portion thereof is unfit for human habitation without providing the notification or hearing specified in 105 CMR 410.831(B) and (C). A copy of the determination of immediate danger, and a copy of the finding of unfitness for human habitation shall be sent to each affected occupant, and to the owner.

(E) Condemnation, order to vacate, order to secure. At the same time, or at any time after the board of health issues a finding that a dwelling or portion thereof is unfit for human habitation, the board may issue an order condemning the dwelling or portion thereof and an order to vacate the dwelling or portion thereof, and an order requiring the owner to secure the dwelling or portion thereof. If the dwelling or portion thereof which is ordered to be secured is unoccupied (and therefore no public hearing was conducted prior to the issuance of the order) then the owner or any other affected person shall have the right to request a hearing in accordance with 105 CMR 410.850 through 410.860. No dwelling or portion thereof which is ordered to be secured shall be occupied without the prior written permission of the board of health based upon the board's written finding that the dwelling or portion thereof to be occupied is fit for human habitation.

(F) Demolition. If one year after the issuance of an order to secure, compliance with the minimum standards set forth in 105 CMR 410.000 has not been effected, then the board of health may cause the dwelling or portion thereof to be demolished or removed.

410.832: Content of Orders

(A) Every order authorized by 105 CMR 410.000 shall be in writing.

(B) Subject to the emergency provision of 105 CMR 400.200(B), any order issued under the provisions of 105 CMR 410.000:

(1) shall include a statement of the violations, conditions or defects; and, in the case of occupied dwelling units, a determination whether any violation(s) or conditions, or the cumulative effect of more than one violation or condition may endanger or materially impair the health or safety, and well-being of an occupant, and a copy of all inspection reports;

(2) shall contain notice of the right to a hearing; of the deadline and proper procedure for requesting a hearing; the right to inspect and obtain copies of all relevant inspection or investigation reports, orders, notices and other documentary information in the possession of the board of health; the right to be represented at the hearing; and that any affected party has a right to appear at said hearing;

(3) shall indicate the time limit for compliance pursuant to 105 CMR 410.830;

(4) shall include the following statement translated into any non-English language that is spoken as a primary language by greater than 1% of the population of that community. "*This is an important legal document. It may affect your rights. You should have it translated*."

(5) and, shall, in an order to an owner, advise the owner that the conditions which exist may permit the occupant of the dwelling to exercise one or more statutory remedies.

(C) If an inspection for all the standards in 105 CMR 410.000 reveals no violation of 105 CMR 410.000 the board of health shall forward a copy of the inspection report and a letter so stating to the owner within seven days of completion of the inspection.

410.833: Service of Orders

(A) All orders issued under 105 CMR 410.830 shall be served on the persons responsible for the violation. Orders and/or notices issued under 105 CMR 410.831 shall be served on the owner or his agent and the affected occupants.

(B) All orders and/or notices shall be served:

(1) personally by an person authorized to serve civil process; or

(2) by leaving a copy at his last and usual place of abode; or

(3) by sending him a copy by registered or certified mail, return receipt requested if he is within the Commonwealth; or

(4) if his last and usual place of abode is unknown or outside the Commonwealth, by posting a copy in a conspicuous place on or about the dwelling or portion thereby affected.

(C) A copy of every order issued under the provisions of 105 CMR 410.831 shall also be served upon every mortgagee and lien holder of record by sending it registered or certified mail, return receipt requested.

(D) A copy of every order or subsequent notice issued under the provisions of 105 CMR 410.830 to an owner shall also be personally delivered or sent by first class mail to the occupants of all affected premises, except that when a violation in a common area affects more than three dwelling units or rooming units the notification required by 105 CMR 410.000 may be satisfied by posting a copy of every order or subsequent notice in a conspicuous place in the building.

410.840: Variances

(A) Except for those conditions enumerated under 105 CMR 410.750(A) through (O), the board of health may vary the application of any provision of 105 CMR 410.000 with respect to any particular case when, in its opinion, the enforcement thereof would do manifest injustice; provided that the decision of the board of health shall not conflict with the spirit of these minimum standards or any other applicable statute, code or regulation, and provided further, such variances may be granted only after notice is given to all affected occupants and after a hearing is held. Any variance granted by the board of health shall be in writing and shall not be in effect unless it is filed by the owner in the registry of deeds for the county, or appropriate district thereof, in which the dwelling is located. A copy of any such variance shall, while it is in effect, be available to the public at all reasonable hours in the office of the clerk of the city or town, or in the office of the board of health.

(B) Any variance of other modification authorized to be made by 105 CMR 410.000 may be subject to such qualification, revocation, suspension or expiration as the board of health expresses in its grant. A variance or other modification authorized to be made by 105 CMR 410.000 may otherwise be revoked, modified, or suspended in whole or in part, only after the owners and affected occupants have been notified in writing and have been given an opportunity to be heard, in conformity with the requirements for an order and hearing of 105 CMR 410.830 through 410.855.

(C) A variance from 105 CMR 410.480 may be granted only by the Massachusetts State Building Code Commissioner when in its opinion, other security measures are in force which adequately protect the resident(s) of such dwelling. (M.G.L. c. 143, § 3R.)

(D) A variance from 105 CMR 410.150(A)(2) which prohibits a kitchen sink to substitute for the required washbasin may be granted by the board of health only if compliance would require extensive costly renovation.

(E) A variance from 105 CMR 410.503(B), (C) and (D) may be granted by the board of health for historic buildings provided that the board of health finds that the public health will not be compromised.

410.850: Right to Hearing

Unless otherwise specified in 105 CMR 410.000, the following persons may request a hearing before the board of health by filing a written petition:

(A) Any person or persons upon whom any order has been served pursuant to any regulation of 105 CMR 410.000 (except for an order issued after the requirements of 105 CMR 410.831 have been satisfied); provided, such petition must be filed within seven days after the day the order was served;

(B) Any person aggrieved by the failure of any inspector(s) or other personnel of the board of health:

(1) to inspect upon request any premises as required under 105 CMR 410.000; provided, such petition must be filed within 30 days after such inspection was requested; or

(2) to issue a report on an inspection as required by 105 CMR 410.000; provided, such petition must be filed within 30 days after the inspection; or

(3) upon an inspection to find violations of 105 CMR 410.000 where such violations are claimed to exist or to certify that a violation or combination of violations may endanger or materially impair the health or safety, and well-being of the occupants of the premises; provided, such petition must be filed within 30 days after receipt of the inspection report; or

(4) to issue an order as required by 105 CMR 410.830; provided, that such petition must be filed within 30 days after receipt of the inspection report.

410.851: Hearing Notice

Upon receipt of a petition the board of health shall in writing inform the petitioner and other affected parties (affected parties shall include the occupants of all affected premises if the petitioner is an owner, and the owner if the petitioner is an occupant) of the date, time and place of the hearing and of their right to inspect and copy the board of health's file concerning the matter to be heard.

410.852: Time for Hearing

The hearing shall be commenced not later than 30 days after the date the order was served. Provided, however, the hearing shall be commenced no later than:

(1) 14 days after an order was served pursuant to 105 CMR 410.830(A) and 410.830(B) and the petitioner refuses to begin remedial activity as required pending the outcome of the hearing; or

(2) 14 days after request for a hearing was received in instances where the petitioner alleges that an inspector or other personnel of the board of health has

(a) failed to inspect upon request any premises; or

(b) failed to issue an inspection report on an inspection as required by 105 CMR 410.000; or

(c) failed to find violations of the law where such violations are claimed to exist or to certify that such violations may endanger or materially impair the health or safety, and well-being of the occupant(s); or

(d) failed to issue an order as required by 105 CMR 410.830.

410.853: Hearing Procedures

At the hearing the petitioner and other affected parties shall be given an opportunity to be heard, to present witnesses or documentary evidence, and to show why an order should be modified or withdrawn, or why a dwelling should not be condemned, vacated or demolished or why an action or failure to act by an inspector or other personnel of the board of health should be reconsidered, rescinded or ordered. Failure to hold a hearing within the time period specified herein shall not affect the validity of any order.

410.854: Final Decision After Hearing; Failure to Comply with Final Order

(A) The board of health shall sustain, modify, or withdraw the order and shall inform the petitioner in writing of its decision within not more than seven days after the conclusion of the hearing. If the board of health sustains or modifies the order, it shall be carried out within the time period allotted in the original order or in the modification.

(B) If a written petition for a hearing is not filed with the board of health within the appropriate time provided for in 105 CMR 410.850, or if after a hearing the order has been sustained in whole or part, each day's failure to comply with the order as issued or modified shall constitute an additional offense.

410.855: Official Hearing Record

Every notice, order, or other record prepared by the board of health in connection with the hearing shall be entered as a matter of public record in the office of the clerk of the city or town, or in the office of the board of health.

410.860: Appeal of Final Decisions

Any person aggrieved by the final decision of the board of health with respect to any order issued under the provisions of 105 CMR 410.000 may seek relief therefrom in any court of competent jurisdiction, as provided by the laws of this Commonwealth.

410.900: Penalties for Interference with Inspections

Any owner, occupant, or other person who refuses, impeded, inhibits, interferes with, restricts or obstructs entry and free access to every part of the structure, operation or premises where inspection authorized by this code is sought after a search warrant has been obtained and presented in accordance with 105 CMR 400.100(C), shall be fined upon conviction not less than ten nor more than $500.00.

410.910: Penalty for Failure to Comply with Order

Any person who shall fail to comply with any order issued pursuant to the provisions of 105 CMR 410.000 shall upon conviction be fined not less than $10.00 nor more than $500.00. Each day's failure to comply with an order shall constitute a separate violation. See also 105 CMR 410.854(B).

410.920: Penalty for Other Offenses

Any person who shall violate any provision of 105 CMR 410.000 for which penalty is not otherwise provided in any of the General Laws or in any other provision of 105 CMR 410.000 shall upon conviction be fined not less than $10.00 nor more than $500.00.

410.950: Condemnation, Placarding and Vacating Dwellings

(A) If a written petition for a hearing is not filed in the office of the board of health within seven days after an order of condemnation of any dwelling or portion thereof has been issued, or if after written notice that the board of health is considering ordering a dwelling or portion thereof condemned and/or vacated and demolished, or if after a hearing the order of condemnation of a dwelling or portion thereof is issued, the dwelling or portion thereof so affected by the order shall be placarded by the board of health.

(B) No dwelling or portion thereof which has been condemned and placarded as unfit for human habitation shall again be used for human habitation until written approval is secured from, and such placard is removed by, the board of health. No person shall deface or remove the placard, except that the board of health shall remove it whenever the defect or defects upon which the condemnation and placarding action was based have been eliminated.

(C) If any person refuses to leave a dwelling or portion thereof which has been ordered condemned and vacated and has been placarded in accordance with 105 CMR 410.830 through 410.950, may be forcibly removed by the board of health, or by local police authorities on request of the board of health. (*See* 105 CMR 410.830 through 410.920).

(D) The board of health may undertake to demolish any dwelling an order for whose destruction was properly served on the owner and every mortgagee of record in

accordance with the requirements of notice and hearing in 105 CMR 410.831 through 410.860, and M.G.L. c. 111, § 127B and a claim for the expense incurred by said board in so doing shall constitute a debt due the city or town upon the completion of the work and the rendering of an account therefore to the owner of such structure, and shall be recoverable from such owner in an action of contract. Said debt, together with interest thereon at the rate of 6% per annum from the date said debt becomes due, shall constitute a lien on the land upon which the structure was located if a statement of claim, signed by the board of health, setting forth the amount claimed without interest is filed, within ninety days after the debt becomes due, with the register of deeds for record or registration, as the case may be, in the county or in the district, if the county is divided into districts, where the land lies. Such lien shall take effect upon the filing of the statement aforesaid and shall continue for two years from the first day of October next following the day of such filing. Such lien may be dissolved by filing with the register of deeds for record or registration, as the case may be, in the county or in the district, if the county is divided into districts, where the land lies, a certificate from the collector of the city or town that the debt for which such lien attached, together with interest and costs thereon, has been paid or legally abated. Such collector shall have the same powers and be subject to the same duties with respect to such claim as in the case of the annual taxes upon real estate; and the provisions of law relative to collection of such annual taxes, the sale or taking of land for the nonpayment thereof, and the redemption of land so sold or taken shall apply to such claim.

410.960: Correction of Violations by Board of Health; Expenses

(A) If a failure to comply with an order requiring that any dwelling or its premises be properly cleaned or repaired results in a condition which endangers or materially impairs the health or well-being of the occupant or the public, the board of health may cause such proper cleaning or repair and charge the responsible person or persons as hereinbefore provided with any and all expenses incurred. Any such charges by the board of health shall not absolve the responsible person or persons from any penalty warranted by the failure to comply with the order.

(B) The board of health may also act in an emergency under the provisions of 105 CMR 400.200(B) to clean or repair any dwelling which so fails to comply with the provisions of 105 CMR 410.000 as to endanger or materially impair the health or safety, and well-being of the occupant or the public, and to charge the responsible person or persons with any and all expenses incurred.

REGULATORY AUTHORITY

105 CMR 410.000: M.G.L. c. 111, §§ 3 and 127A.

410.990: Appendix: Forms

105 CMR: DEPARTMENT OF PUBLIC HEALTH

_____
CITY/TOWN

_____
DEAPRTMENT

_____
TELEPHONE

Address _____Occupant _____
Floor_____ Apartment No. _____No
Occupants_____
No. of Hapitable Rooms_____ No. of Sleeping Rooms_____
No. dwelling or rooming units _____No. Stories _____
Name and Address of Owner _____

		Remarks	Reg.	Vio.
YARD	Out Bldgs. Fences			
	Garbage and Rubbish			
	Containers			
	Drainage			
	Infestation Rats or other:			
SRUCTURE EXT. __ S___ F __ M	Steps, Stairs, Porches:			
	Dual Egress			
	Doors, Windows:			
	Roof			
	Gutters, Drains:			
	Walls			
	Foundation			
	Chimney			
BASEMENT	Gen. Sanitation:			
	Dampness:			
	Stairs:			
	Lighting:			
STRUCTURE INT	Hall, Stairway:			
	Hall, Floor, Wall, Ceiling:			
	Hall Lighting			
	Hall Windows			
HEATING Central __Y ___N Type:	Chimneys:			
	Equip. Repair			
	Stacks, Flues, Vents:			
PLUMBING ___MS ___ST__P	Supply Line:			
	Waste Line:			
	H.W. Tank(s) Safety and Vent(s)			
ELECTRICAL __110 ___220 AMP:	Panels, Meters, Circ			
	Fusing Grnd:			
	Gen. Cond. Distrib. Box:			
	Gen Basement Wiring:			

	DWELLING UNIT											
	Ventil	Lgtng	Outlets	Walls	Ceils	Wind	Doors	Floors	Locks			
Kitchen												
Bathroom												
Pantry												
Den												
Living Room												
Bedroom (1)												
Bedroom (2)												
Bedroom (3)												
Bedroom (4)												
Hot Water Facil.	Sup, Ten, Gas, Oil, Elect.											
	Stacks, Flues, Vents, Safeties											
Kitchen Facil.	Sink											
	Stove											
Bathing, Toilet Facil.	Vent, Plumb., Sanitn.											
	Wash Basin, Shower or Tub											
Infestation	Rats, Mice, Roaches or Other:											
Egress	Dual and Obst											
General	Building Posted:											
	Locks on doors:											

ONE OR MORE OF THE VIOLATIONS CHECKED ABOVE IS A CONDITION WHOCH MAY MATERIALLY IMPAIR THE HEALTH OR SAFETY AND WELL-BEING OF THE OCCUPANT AS DETERMINED BY 105 CMR 410.750 OR THE AUTHORIZED INSPECTOR. (SEE OVER)

INSPECTOR _____TITLE_____

DATE_____ TIME _____

THE NEXT SCHEDULED REINSPECTION _____

410.990: continued
THE FOLLOWING IS A BRIEF SUMMARY OF SOME OF THE LEGAL REMEDIES TENANTS MAY USE IN ORDER TO GET HOUSING CODE VIOLATIONS CORRECTED.

1. Rent Withholding (General Laws Chapter 239 Section 8A).
If Code Violations Are Not Being Corrected you may be entitled to hold back your rent payment. You can do this without being evicted if:

A. You can prove that your dwelling unit or common areas contain violations which are serious enough to endanger or materially impair your health or safety and that your landlord knew an=bout the violations before you were behind in your rent.

B. You did not cause the violations and they can be repaired while you continue to live in the building.

C. You are prepared to pay any portion of the rent into court if a judge orders you to pay for it. (for this it is best to put the rent money aside in a safe place.)

2. Repair and Deduct (General Laws Chapter 111 Section 127L).
This law *sometimes* allows you to use your rent money to make the repairs yourself. If your local code *enforcement agency certifies* that there are code violations which endanger or materially impair your health, safety or well-being and your landlord has received written notice of the violations, you may be able to use this remedy. If the owner fails to begin necessary repairs (or enter into a written contract to have them made) within five days after notice or to complete repairs within 14 days *after notice* you can use up to four months' rent in any year to make the repairs.

3. Retaliatory Rent Increases or Eviction Prohibited (General Laws Chapter 186, Section 18 and Chapter 239 Section 2A).
The owner may not increase your rent or evict you in retaliation for making a complaint to your local code enforcement agency about code violations. If the owner raises your rent or tries to evict within six months after you have made the complaint he or she will have to show a good reason for the increase or eviction which is unrelated to your complaint. You may be able to sue the landlord for damages if he or she tries this.

4. Rent Receivership (General Laws Chapter 111 Sections 127C-H).
The occupants and/or the board of health may petition the District or Superior Court to allow rent to be paid into court rather than to the owner. The court may then appoint a "receiver" who may spend as much of the rent money as is needed to correct the violation. The receiver is not subject to a spending limitation of four months' rent.

5. Search of Warranty of Habitability.
You may be entitled to sue your landlord to have all or some of your rent returned if your dwelling unit does net meet minimum standards of habitability.

6. Unfair and Deceptive Practices (General Laws Chapter 93A)
Renting an apartment with code violations is a violation of the consumer protection act and regulations for which you may sue an owner.

THE INFORMATION PRESENTED ABOVE IS ONLY A SUMMARY OF THE LAW, BEFORE YOU DECIDE TO WITHHOLD YOUR RENT OR TAKE ANY LEGAL ACTION. IT IS ADVISABLE THAT YOU CONSULT AN ATTORNEY, YOU SHOULD CONTACT THE NEAREST LEGAL SERVICES OFFICE WHICH IS:
(NAME)_____
(TELEPHONE NUMBER) _____
(ADDRESS) _____

940 CMR 3: CONSUMER PROTECTION GENERAL REGULATIONS

3.17: Landlord-Tenant

(1) Conditions and Maintenance of a Dwelling Unit. It shall be an unfair or deceptive act or practice for an owner to:

(a) Rent a dwelling unit which, at the inception of the tenancy

1. contains a condition which amounts to a violation of law which may endanger or materially impair the health, safety, or well-being of the occupant; or

2. is unfit for human habitation;

(b) Fail, during the terms of the tenancy, after notice is provided in accordance with M.G.L. c. 111, § 127L, to

1. remedy a violation of law in a dwelling unit which may endanger or materially impair the health, safety, or well-being of the occupant, or

2. maintain the dwelling unit in a condition fit for human habitation; provided, however, that said violation of law was not caused by the occupant or others lawfully upon said dwelling unit;

(c) Fail to disclose to a prospective tenant the existence of any condition amounting to a violation of law within the dwelling unit of which the owner had knowledge or upon reasonable inspection could have acquired such knowledge at the commencement of the tenancy;

(d) Represent to a prospective tenant that a dwelling unit meets all requirements of law when, in fact, it contains violations of law;

(e) Fail within a reasonable time after receipt of notice from the tenant to make repairs in accordance with a pre-existing representation made to the tenant;

(f) Fail to provide services and/or supplies after the making of any representation or agreement, that such services would be provided during the term or any portion of the term of the tenancy agreement;

(g) Fail to reimburse the tenant within a reasonable or agreed time after notice, for the reasonable cost of repairs made or paid for, or supplies or services purchased by the tenant after any representation, that such reimbursement would be made;

(h) Fail to reimburse an occupant for reasonable sums expended to correct violations of law in a dwelling unit if the owner failed to make such corrections pursuant to the provisions of M.G.L. c. 111, § 127L, or after notice prescribed by an applicable law;

(i) Fail to comply with the State Sanitary Code or any other law applicable to the conditions of a dwelling unit within a reasonable time after notice of a violation of such code or law from the tenant or agency.

(2) Notices and Demands. It shall be an unfair or deceptive practice for an owner to:

(a) Send to a tenant any notice or paper which appears or purports to be an official or judicial document but which he knows is not;

(b) Fail or refuse to accept any notice sent to any address to which rent is customarily sent, or given to any person who customarily accepts on behalf of the owner, or sent to the person designated in the rental agreement in accordance with 940 CMR 3.17 (3)(b)2.

(c) Demand payment for increased real estate taxes during the term of the tenancy unless, prior to the inception of the tenancy, a valid agreement is made pursuant to which the tenant is obligated to pay such increase.

(3) Rental Agreements.

(a) It shall be unfair or deceptive act or practice for an owner to include in any rental agreement any term which:

1. Violates any law;

2. Fails to state clearly and conspicuously in the rental agreement the conditions upon which an automatic increase in rent shall be determined. Provided, however, that nothing contained in 940 CMR 3.17 (3)(a)2. shall be deemed to invalidate an otherwise valid tax escalator clause;

3. Contains a penalty clause not in conformity with the provisions of M.G.L. c. 186, § 15B;

4. Contains a tax escalator clause not in conformity with the provisions of M.G.L. c. 186, § 15C;

(b) It shall be an unfair or deceptive practice for an owner to enter into a written rental agreement which fails to state fully and conspicuously, in simple and readily understandable language:

1. The names, addresses, and telephone numbers of the owner, and any other person who is responsible for the care, maintenance and repair of the property;

2. The name, address, and telephone number of the person authorized to receive notices of violations of law and to accept service of process on behalf of the owner;

3. The amount of the security deposit, if any; and that the owner must hold the security deposit in a separate, interest-bearing account and give to the tenant a receipt and notice of the bank and account number; that the owner must pay interest, at the end of each year of the tenancy, if the security deposit is held for one year or longer from the commencement of the tenancy; that the owner must submit to the tenant a separate written statement of the present condition of the premises, as required by law, and that, if the tenant disagrees with the owner's statement of condition, he/she must attach a separate list of any damage existing in the premises and return the statement to the owner; that the owner must, within thirty days after the end of the tenancy, return to the tenant the security deposit, with interest, less lawful deductions as provided in M.G.L. c. 186, § 15B; that if the owner deducts for damage to the premises, the owner shall provide to the tenant, an itemized list of such damage, and written evidence indicating the actual or estimated cost of repairs necessary to correct such damage; that no amount shall be deducted from the security deposit for any damage which was listed in the separate written statement of present condition or any damage listed in any separate list submitted by the tenant and signed by the owner or his agent; that, if the owner transfers the tenant's dwelling unit, the owner shall transfer the security deposit, with any accrued interest, to the owner's successor in interest for the benefit of the tenant.

(c) It shall be unfair and deceptive practice for an owner to fail to give the tenant an executed copy of any written rental agreement within 30 days of obtaining the signature of the tenant thereon.

(4) Security Deposits and Rent in Advance. It shall be an unfair or deceptive practice for an owner to:

(a) require a tenant or prospective tenant, at or prior to the commencement of any tenancy, to pay any amount in excess of the following:

1. rent for the first full month of occupancy; and

2. rent for the last full month of occupancy calculated at the same rate as the first month; and

3. a security deposit equal to the first month's rent; and,

4. the purchase and installation cost for a key and lock.
or, at any time subsequent to the commencement of a tenancy, demand rent in advance in excess of the current month's rent or a security deposit in excess of the amount allowed by 940 CMR 3.17 (4)(a)3.

(b) fail to give to the tenant a written receipt indicating the amount of rent in advance for the last month of occupancy, and a written receipt indicating the amount of the security deposit, if any, paid by the tenant, in accordance with M.G.L. c. 186, § 15B;

(c) fail to pay interest at the end of each year of the tenancy, on any security deposit held for a period of one year or longer from the commencement of the term of the tenancy, as required by M.G.L. c. 186, § 15B;

(d) fail to hold a security deposit in a separate interest-bearing account or provide notice to the tenant of the bank and account number, in accordance with M.G.L. c. 186, § 15B;

(e) fail to submit to the tenant upon receiving a security deposit or within ten days after commencement of the tenancy, whichever is later, a separate written statement of the present condition of the premises in accordance with M.G.L. c. 186, § 15B;

(f) fail to furnish to the tenant, within 30 days after the termination of occupancy under a tenancy-at-will or the end of the tenancy as specified in a valid written rental agreement, an itemized list of damage, if any, and written evidence indicating the actual or estimated cost of repairs necessary to correct such damage, in accordance with M.G.L. c. 186, § 15B;

(g) fail to return to the tenant the security deposit or balance thereof to which the tenant is entitled after deducting any sums in accordance with M.G.L. c. 186, § 15B, together with interest, within thirty days after termination of

occupancy under a tenancy-at-will agreement or the end of the tenancy as specified in a valid written rental agreement;

(h) deduct from a security deposit for any damage which was listed in the separate written statement of present condition given to the tenant prior to execution of the rental agreement or creation of the tenancy, or any damages listed in any separate list submitted by the tenant and signed by the owner or his agent;

(i) fail, upon transfer of his interest in a dwelling unit for which a security deposit is held, to transfer such security deposit together with any accrued interest for the benefit of the tenant to his successor in interest, in accordance with M.G.L. c. 186, § 15B;

(j) fail, upon transfer to him of a dwelling unit for which a security deposit is held, to assume liability for the retention and return of such security deposit, regardless of whether the security deposit was, in fact, transferred to him by the transferor of the dwelling unit, in accordance with M.G.L. c. 186, § 15B; provided, that 940 CMR 3.17 (4)(j) shall not apply to a city or town which acquires property pursuant to M.G.L. c. 60 or to a foreclosing mortgagee or a mortgagee in possession which is a financial institution chartered by the Commonwealth or the United States, or;

(k) otherwise fail to comply with the provisions of M.G.L. c. 186, § 15B. 940 CMR 3.00 shall not be deemed to limit any rights or remedies of any tenant or other person under M.G.L. c. 186, § 15B (6) or (7).

(5) Evictions and Termination of Tenancy. It shall be an unfair and deceptive practice for an owner to:

(a) Deprive a tenant of access to or full use of the dwelling unit or otherwise exclude him without first obtaining a valid writ of execution for possession of the premises as set forth in M.G.L. c. 239 or such other proceedings authorized by law;

(b) Commence summary process for possession of a dwelling unit before the time period designated in the notice to quit under M.G.L. c. 186, § § 11 and 12, has expired; provided, however, nothing in this section shall effect the rights and remedies contained in M.G.L. c. 239 § 1A.

(6) Miscellaneous. It shall be an unfair and deceptive practice for an owner to:

(a) Impose any interest or penalty for late payment or rent unless such payment is 30 days overdue;

(b) Retaliate or threaten to retaliate in any manner against a tenant for exercising or attempting to exercise any legal rights as set forth in M.G.L. c. 186, § 18;

(c) Retain as damages for a tenant's breach of lease, of the failure of a prospective tenant to enter into a written rental agreement after signing a rental application, any amount which exceeds the damages to which he is entitled under the law, or an amount which the parties have otherwise agreed as to the amount of the damages;

(d) Require payment for rent for periods during which the tenant was not obligated to occupy and did not in fact occupy the dwelling unit unless otherwise agreed to in writing by the parties;

(e) Enter a dwelling unit other than (i) to inspect the premises, or (ii) to make repairs thereto, or (iii) to show the same to a prospective tenant, purchaser, mortgagee or its agents, or (iv) pursuant to a court order, or (v) if the premises appear to have been abandoned by the tenant, or (vi) to inspect, during the last 30 days of the tenancy or after either party has given notice to the other of intention to terminate the tenancy, for the purpose of determining the amount of damage, if any, to the premises which would be cause of reduction from any security deposit held by the owner.

(f) To violate willfully any provisions of M.G.L. c. 186, § 14.

(f) It shall be an unfair practice for any owner who is obligated by law or by the express or implied terms of any tenancy agreement to provide gas or electric service to an occupant:

1. To fail to provide such service; or

2. To expose such occupant to the risk of loss of such service by failing to pay gas or electric bills when they become due or by committing larceny or unauthorized use of such gas or electricity. For the purpose of this regulation a bill shall be deemed "due" only after the owner has had an opportunity to contest it at a Department of Public Utilities hearing or any appeal from such hearing during which termination of service has been stayed.

SUMMARY PROCESS FORMS

Affidavit Under Summary Process Form

COMMONWEALTH OF MASSACHUSETTS
_____SS: HOUSING COURT DEPARTMENT
_____ DIVISION
/ / /SP- / / / / /

_____
Plaintiff/Landlord
VS.

_____
Defendant/Tenant

AFFIDAVIT UNDER SUMMARY PROCESS RULE 10(d)(ii)

I, _____, state for an affidavit under penalties of perjury, and from my own personal knowledge, that I am the _____ _____in this action, that the defendant-tenant is not an infant or incompetent person, and is not in the military service as defined in the Servicemembers Civil Relief Act, but is instead residing at _____that no payments have been made by or on behalf of the tenant after filing the summary process Complaint, except _____, that the tenant owes rent or use and occupancy charges at the **rate** of **$** _____
per _____for the period from _____
through _____as follows:

Amount: $_____ **Date:** _____
_____

_____

_____

and that there remains due and owing a balance of **$** _____ which balance includes only unpaid rent or use and occupancy charges and does not include court costs or other claims, debts, damages or expenses.

_____
Signature and Date:

_____
Name of Plaintiff-Landlord:

_____
Address and Telephone:

_____

Agreement for Judgment Form

COMMONWEALTH OF MASSACHUSETTS

_____SS: HOUSING COURT DEPARTMENT
_____ DIVISION
/ / /SP- / / / / /

_____
Plaintiff/Landlord
VS.

_____
Defendant/Tenant

SUMMARY PROCESS AGREEMENT FOR JUDGMENT

THE UNDERSIGNED PARTIES HEREBY AGREE TO THE FOLLOWING FACTS AND TO ENTRY OF THE FOLLOWING JUDGMENT AS A RESOLUTION OF THEIR CASE:

( ) The agreed upon rent for the unit is **$**_____ per month.

( ) The tenant owes **$**_____in contract rent for the period of: _____ through _____, 200_____

_____

( ) The rent owed is reduced by **$** _____ on account of the tenant's claims, leaving

an amount owed of **$**_____**.**

( ) Judgment for possession and for **$**_____ is to enter for:
☐ the landlord ☐ he tenant on _____ , plus costs of $_____.

( ) The Landlord shall make the following repairs to the premises according to the following schedule:

_____

_____

_____

( ) The parties further agree as follows:

_____

_____

_____

_____

_____

_____

_____

_____

( ) If either party alleges that the other party has failed to comply with the terms and conditions of this Agreement, she/he may mark a hearing for enforcement of the Agreement or for issuance of execution upon **three (3) business days,** written notice to the other party and filed with the court. The **three (3)day** period begins when the other side receives notice. Unless otherwise agreed, notice is to be delivered rather than mailed.

( ) The tenant agrees to vacate on _____ , 200____. Landlord may request in writing an execution to issue thereafter.

( ) If the tenant complies with these conditions, the case will be dismissed on_____ and the tenancy will be reinstated on that date.

( ) The parties shall appear in court on _____ at _____ **o'clock** for review on compliance with this Agreement.

ONCE APPROVED BY THE JUDGE, THIS AGREEMENT BECOMES A COURT ORDER AND BOTH PARTIES ARE LEGALLY REQUIRED TO FOLLOW IT. If questions arise, please consult the Housing Specialist.

I UNDERSTAND THAT I HAVE THE RIGHT TO A HEARING ON MY CASE BEFORE A JUDGE, BUT INSTEAD, I CHOOSE TO SIGN THIS AGREEMENT.

_____ _____

Signed and dated by Landlord: **Signed and dated by Tenant:**

_____ _____

Plaintiff's Attorney: **Defendant's Attorney:**

_____

_____ **JUDGE:**

Housing Specialist:

Copies (given) (mailed) to the parties on _____.

Stipulation for Rent, Repairs, and Review Form

COMMONWEALTH OF MASSACHUSETTS

_____SS: HOUSING COURT DEPARTMENT
_____ DIVISION
___/___/SP- ___/___/___/___/___/

_____
Plaintiff/Landlord
VS.

_____
Defendant/Tenant

STIPULATION FOR RENT, REPAIRS, AND REVIEW

The undersigned parties hereby stipulate and agree as follows:

1. The tenant shall pay rent of $_____on _____ for _____ to _____and shall pay rent of $_____ on _____ _____ for _____ to _____all pending further agreement or further order.

2. The landlord shall make the following repairs to the premises according to the following schedule:

_____

_____

_____

_____

_____

_____

_____

_____

3. The Housing Specialist shall view conditions at the premises on _____ at _____o'clock, and shall report to the parties and to the court [orally] [in writing] on _____ at _____o'clock.

4. The parties shall appear in court on _____ at _____ o'clock for further review or trial on the merits of the action.

5. The parties further agree as follows:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

ONCE APPROVED BY THE JUDGE, THIS AGREEMENT BECOMES A COURT ORDER AND BOTH PARTIES ARE LEGALLY REQUIRED TO FOLLOW IT. If questions arise, please consult the Housing Specialist.

I UNDERSTAND THAT I HAVE THE RIGHT TO A HEARING ON MY CASE BEFORE A JUDGE, BUT INSTEAD, I CHOOSE TO SIGN THIS AGREEMENT.

_____ _____

Signed and dated by Landlord: **Signed and dated by Tenant:**

_____ _____

Plaintiff(s) Attorney: **Defendant(s) Attorney:**

_____ _____

Housing Specialist: **Judge:**

Copies (given) (mailed) to parties on: _____

Summary Process Answer Form

Commonwealth of Massachusetts

THE TRIAL COURT

SUMMARY PROCESS ANSWER

.....
(trial date)

_____, ss: HOUSING COURT DEPARTMENT
_____ DIVISION

SUMMARY PROCESS ACTION
DOCKET NO. / / / - / / / / / /

.....
Plaintiff(s) - Landlord(s)

versus

.....
Defendant(s) - Tenant(s)

INSTRUCTIONS TO DEFENDANT (TENANT) - PLEASE REAL CAREFULLY:

Listed below for you to check and fill in as applicable are possible defenses you might have to the Plaintiff's (Landlord's)Complaint which has been served on you. (A defense is a legal reason for not evicting you.) If one or more of these defenses apply to your case, check the appropriate box(es). If you check a defense which has blank lines after it, you must write in facts in support of that defense. Use additional pages if necessary.

In addition, space is provided for you to counterclaim against your landlord if you wish to do so. (A counterclaim means asking that the amount of rent you owe be reduced or that your landlord pay you money because he or she has violated your rights.) If you wish to counterclaim, fill in the appropriate blank lines. Use additional pages if necessary, and please be as specific as possible.

You should be aware that there may be possible defenses and counterclaim which are not listed below, and that some are rather technical in nature. You are permitted to fill out and file this answer, and to appear in court without a lawyer, but if you can an wish to, you should obtain the services of a lawyer for advice and/or representation in court.

YOU MUST FILE THIS ANSWER OF ANOTHER LEGALLY SUFFICIENT ANSWER, WITH THE CLERK AND SEND A COPY TO THE PLAINTIFF OR PLAINTIFFS ATTORNEY TO BE RECEIVED NO LATHER THAN THE **MONDAY** BEFORE THE DATE SCHEDULED FOR TRIAL, AS INDICATED ON THE SUMMONS, OR YOU MAY LOSE BY DEFAULT. YOU MUST ALSO BE IN COURT FOR TRIAL OR YOU WILL LOSE BY DEFAULT.

ANSWER TO COMPLAINT

(Please type or print)

☐ I specifically deny the following facts stated in the Complaint: .....

.....

.....

☐ I am legally withholding my rent because:

.....

.....

☐ The landlord is trying to evict me for my exercising my rights as follows: .....

.....

☐ I have a written lease which has not expired and the landlord has not given me notice that he/she is terminating my lease.

☐ I have not received a notice from the landlord telling me to leave the premises, and I do not have a written lease.

☐ If I have ever owed the landlord any rent, I have paid it all or have paid it within the time required by law.

☐ I was not properly notified of this court action: .....

.....

☐ The landlord's Complaint fails to state facts which would allow him/her to evict me: .....

.....

☐ There is another person against whom this action should be brought: .....

.....

☐ I have not been properly named in the Complaint: .....

☐ There is another Summary Process action pending against me.

☐ I am a tenant in a public housing program and my landlord did not get the required permission before beginning this eviction case.

☐ I have other defenses as follows:.....

.....

IMPORTANT: In some cases, the Court has the power to give you time to find a new place to live even if you do not have any of the listed defenses. If you wish the Court to determine whether you are entitled to it, please check below:

☐ I wish time to move because I cannot find another residence.

COUNTERCLAIM

If you believe that you are entitled to a return of part of your rent payment or other damages from the landlord, complete the statement below:

I here by counterclaim in the amount of $ ..... I feel that I am entitled to this amount for the following reasons:

.....

.....

.....

.....

.....

....
(Name of Defendant(s) or Attorney) (Signature of Defendant(s) or Attorney)

.....
(Address)

.....

_____
Summary Process Form 2 (Answer)

SMALL CLAIMS FORMS

Small Claims Answer Form

COMMONWEALTH OF MASSACHUSETTS

_____,SS: HOUSING COURT DEPARTMENT

_____ DIVISION

/ / / - / / / / / /

SMALL CLAIMS ACTION:

ANSWER TO CLAIM

(Please print or type)

I, the Defendant in the above referred-to Small Claims Action, understand that in this Answer, I must state fully and specifically what facts set out in the Plaintiff's Statement of Claim I deny, and what facts I admit, and I do so as follows:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

NOTE TO DEFENDANT: If you admit the plaintiff's Claim and desire time to pay, please so indicate above.

Date: _____ _____

Signature of Defendant(s) or Attorney and, if by Attorney, his/her address)

_____

Street State Zip Code

_____

Small Claims Form 2A (4-79)

Small Claims Counterclaim Form

COMMONWEALTH OF MASSACHUSETTS
_____,SS: HOUSING COURT DEPARTMENT
_____ DIVISION
/ / / - / / / / / /
SMALL CLAIMS NO.

_____
PLAINTIFF(S)
VS.

_____
DEFENDANT(S)

SMALL CLAIMS COUNTERCLAIM

I, the defendant, wish to enter a counterclaim against the plaintiff in this case for a total of $ _____.

My Counterclaim is based on the following:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____ _____
DEFENDANT'S SIGNATURE **DATE**

SAMPLE FORMS - NOT FOR USE

Small Claims Complaint Form

Statement of Small Claim and Notice of Trial	Docket No.	Trial Court of Massachusetts Small Claims Session

Part 1:

☐ **Boston Municipal Court**	☐ **District Court** _____**Division**	☐ **Housing Court** _____**Division**

Part 2:

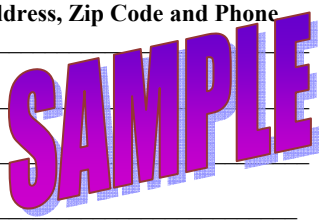
Plaintiff's Name, Address, Zip Code and Phone

_____

_____

_____

Phone No: _____



Plaintiff's Attorney (If any)

Name:_____

Address: _____

_____

Phone No: _____

Part 3:

Defendant's Name, Address, Zip Code and Phone

_____

_____

_____

Phone No: _____

Additional Defendant (If any)

_____

_____

_____

Phone No: _____

Part 4:

PLAINTIFF'S CLAIM: The defendant owes $_____ plus $_____ court costs for the following reasons: Give the date of the event that is the basis of your claim.

_____

_____

Signature of plaintiff x _____Date: _____

Part 5: MEDIATION: Mediation of this claim may be available prior to trial if both parties agree to discuss the matter with a mediator, who will assist the parties in trying to resolve the dispute on mutually agreed to terms. The plaintiff must notify the court if he or she desires mediation; the defendant may consent to mediation on the trial date. ☐

The plaintiff is willing to attempt to settle this claim through court mediation.

Part 6: MILITARY AFFIDAVIT: The plaintiff states under the pains and penalties of perjury that the:

☐ above defendant(s) is (are) not serving in the military and at present live(s) or work(s) at the above address.

☐ above defendant(s) is (are) serving in the military.

X _____ _____

Signature of plaintiff Date

Notice of Trial:

NOTICE TO DEFENDANT: You are being sued in Small Claims Court by the above named plaintiff. You are directed to appear for trial of this claim on the date and time noted to the right.

Name and Address of Court
Date and Time of Trial:

Summary Process Summons and Complaint Form

Commonwealth of Massachusetts
The Trial Court

SUMMARY PROCESS SUMMONS
AND COMPLAINT

Housing Department

Division

, ss

Docket No. _____

Entry Date _____

SAMPLE

THIS A[illegible] OF A PROCEEDING TO
[illegible], PLEASE READ IT CAREFULLY
IMPORTANT: ESTE DOCUMENTO ES UNA NOTICIA DE UNA CORTE,
RESPECTO A PROCEDIENTES PARA DESALOJARLE

TO: _____

ADDRESS: _____ CITY: _____ ZIP: _____
You are hereby summoned to appear before a Justice of the Court at the time and place listed below:

DAY: Thursday DATE: _____ TIME: a.m. COURT LOCATION:

Courthouse, ROOM: Courtroom , floor to answer the complaint of

LANDLORD/OWNER: _____ STREET: _____

CITY: _____ ZIP: _____ that you occupy the premises at _____

being within the judicial district of this court, unlawfully and against the right of said Landlord/Owner because

_____

and further, that $ _____ rent is owed according to the following account:

ACCOUNT ANNEXED

_____
First or Chief Justice

_____
Clerk Magistrate

_____
Signature of Plaintiff or Attorney

_____
Date of Signature of Plaintiff or Attorney

_____
Address of Plaintiff's Attorney

_____
Telephone Number of Plaintiff or Attorney

NOTICE TO OCCUPANTS: At the hearing on _____, y[illegible] (or y[illegible]orney) must appear in person to present your defense. You (or your attorney) must also file a [illegible] to this [illegible]mplaint (Answer form 2 is available in the clerk's office.) You must file (deliver or mail) the a[illegible] th[illegible] [illegible]rve (deliver or mail) a copy on the landlord (or landlord's attorney) at the address [illegible] a[illegible] wer m[illegible] be received by the court clerk and received by the landlord (or the landlord's att[illegible] no [illegible] Monday after the Monday entry day.

SAMPLE

IF YOU DO NOT FILE AND SERVE AN [illegible]WER, OR IF YOU DO NOT DEFEND AT THE TIME OF THE HEARING, JUDGMENT MAY BE ENTERED AGAINST YOU FOR POSSESSION AND THE RENT AS REQUESTED IN THIS COMPLAINT.

NOTIFICATION PARA LAS PERSONAS DE HABLA HISPANA: SI USTED NO PUEDE LEER INGLES TENGA ESTE DOCUMENTO LEGAL TRADUCIDO CUANTO ANTES.

bhcgen.1101

To the Sheriffs of our several Counties, or their Deputies, or any Constable of any City or Town within said Commonwealth.
GREETINGS: We command you to summon the within named tenant/occupant to appear as herein ordered.

WITNESS,

_____ _____

First or Chief Justice

_____ _____

Clerk Magistrate Entry Date

OFFICER'S RETURN

_____ ss: City/Town _____ Date _____

By virtue of this Writ, I this day served the within-named tenant or occupant and summoned him/her as herein directed, by giving it in hand to _____

or leaving it at _____
the last and usual place of abode. A copy of this summons was mailed first class to the tenant/occupant at the address

on _____

_____

Signature of Officer

_____

Printed Name of Officer

Fees: Service _____

Copy _____

Travel _____

Use of car _____

L & U Mailing _____

$ _____

NOTICE TO LANDLORD/OWNER:

Have the Officer complete and return above. Service must be made on the defendant no later than the seventh day and not earlier than the thirtieth day before the Monday entry day. This form must be filed in court no later than the close of business on the scheduled Monday entry day. In appropriate cases, proper evidence of notice to quit must be provided this court upon the filing of this complaint. See Rule 2(d) of the Uniform Summary Process Rules. According to Rule 2(c), the hearing date is the second Thursday (or Friday or Monday in some courts) after the entry day.

Amended effective February 1, 1982: July 1, 1986, February 1, 2000, March 1, 2001